



REMOTE MEDIATION AND DISABILITY REPORT

**Empirical Insights for the Maryland Judiciary
and the Dispute Resolution Field**

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I. Acknowledgments

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II. Executive Summary

Sixty-two members of the public participated in two-party remote mediation simulations to help us better understand how remote mediation can increase access to justice for people with disabilities and what barriers it may create. Twenty-three mediators provided the thirty-one remote mediations. Surveys, interviews, and focus groups were used to gain insight before and after they tried remote mediation. The research found that remote mediation was seen as a valuable tool, with 100% of the participants saying that they would recommend remote mediation to someone else.

While feedback was very positive in many aspects, the data also showed that not everyone experiences remote mediation in the same way. Remote mediation appears to provide the greatest benefit with the fewest challenges for many with physical mobility issues who have access to computers, stable internet, and the ability to use the technology. Individuals with sight and hearing issues have shared that remote mediation has value for them, and steps should be taken to address some barriers they experienced.

There are things that mediators, courts, the Judiciary, and the public can do to address some of the technology barriers for people with disabilities. In some cases, simple steps can be taken, such as improving intake questions to ensure an accessible process is being provided. Making pre-mediation technology tests a norm could help ensure everyone has compatible technology and a stable internet connection. Appendix A, Remote Mediation Intake Protocol for People with Disabilities, provides mediators and courts with specific steps and questions to foster greater access to justice when providing remote mediation.

While this report suggests changes to address technology-related issues, participants' insights also highlighted that there are positive emotional and cognitive effects attributable to having access to justice at home. One participant shared,

Access and comfortability are important, and some disabilities are enhanced based upon the environment. The situation and environment can be intimidating. For example, someone with autism or high anxiety may not respond as well in a courtroom or in a mediation as they would at home. Going remote broadens the ability to communicate. It also reduces strain on the system, time, schedules, and participants...

This report includes insights from participants and mediators regarding what worked well, what did not work well, and some possible solutions. Our empirical research can help courts and ADR practitioners to think in a more nuanced manner. While remote mediation is not a single solution for all people, it provides another important tool for the courts to increase access to justice.

III. Introduction

Remote mediation provides increased access to justice by removing geographical barriers and courthouse infrastructure constraints. While some barriers are removed with this technology, we do not know what new barriers are created by a remote mediation infrastructure. The Centers for Disease Control and Prevention reports that one in four adults in the United States has a visible or invisible disability¹. Yet, there has been no empirical research that examines remote mediation and its impact on people with disabilities. There is also a lack of empirical research focused on face-to-face alternative dispute resolution involving people with disabilities to provide even minimal guidance or insight. Given the potential for the positive impact of the increased use of remote mediation, it is crucial for us to understand how to maximize its positive aspects, understand the barriers it may create for people with disabilities, and identify steps that alternative dispute resolution practitioners, courts, the Judiciary, and alternative dispute resolution participants can take to reduce and or address those barriers.

This research focused on remote mediation since it is the most used remote alternative dispute resolution method currently implemented by Maryland courts. A two-phased approach was used to develop empirical data. The first phase employed surveys and semi-structured interviews to gain insights into the concerns that people with disabilities have when contemplating the use of remote mediation. The Judiciary should have an awareness and understanding of these concerns as it explores remote alternative dispute resolution options and implementation by courts. Phase two was having sixty-two participants take part in a two-person remote mediation simulation, resulting in thirty-one remote mediations. The goal of the simulation was to provide first-hand experience to participants and mediators to enable them to provide insights informed by their remote mediation experience. Surveys, interviews, and focus groups were used to collect feedback post-remote mediation. This research made an open call for people who identified as having a disability to participate in the study. The research team focused on getting the word out through disability advocacy groups both in Maryland and with a national reach.

This research design provided insight into how different people with various disabilities (visual, hearing, and physical) experience remote mediation. Given the lack of previous research in this area and the complexities when considering cognitive disabilities, this research had a narrower focus as a first step. The hope is that this research will inspire others to help move our understanding to greater depths.

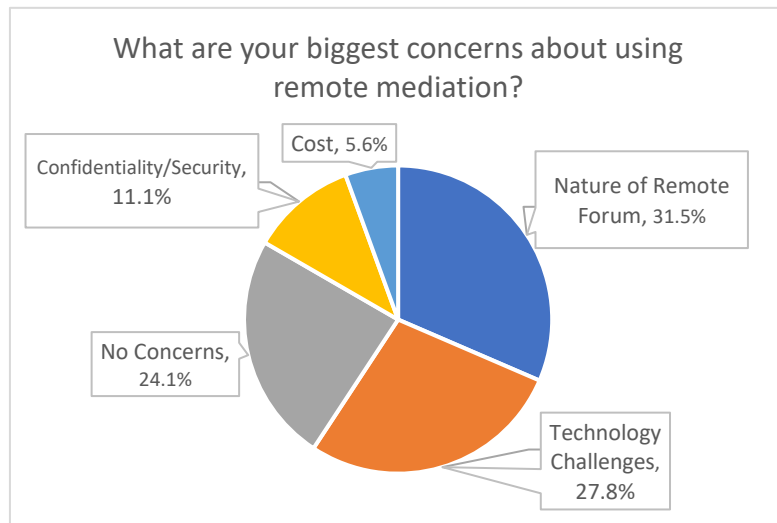
¹ <https://www.cdc.gov/media/releases/2024/s0716-Adult-disability.html#:~:text=The%20latest%20data%2C%20from%20the,having%20a%20disability%20in%202022>

IV. Perception of Remote Mediation

Concerns

In order to gain better insight into the concerns that people with disabilities might have, we surveyed them before participating in the remote mediation simulations. While remote hearings and meetings are now common for the courts, remote technology in a legal proceeding is not a daily part of life for most people.

Additionally, the public has minimal knowledge of mediation and even less exposure to remote mediation. For courts to be able to engage the public in general and, people with disabilities specifically, we must understand their concerns. To that end, the survey asked the question, “What are your biggest concerns about using remote mediation?” Five themes emerged from the seventy people who responded to the survey question. The seventy responders made seventy-two distinct comments. Eighteen responses were not clear; thus, for the purpose of this analysis, fifty-four responses could be analyzed.



To that end, the survey asked the question, “What are your biggest concerns about using remote mediation?” Five themes emerged from the seventy people who responded to the survey question. The seventy responders made seventy-two distinct comments. Eighteen responses were not clear; thus, for the purpose of this analysis, fifty-four responses could be analyzed.

Nature of the Remote Forum

This theme was mentioned in seventeen (31.5%) of the fifty-four responses and reflects concern about the impact of not being in the same room as the mediator and other participants. The dominant concern was the sentiment of not being able to read nonverbals and lack of face-to-face interaction. For example, one survey respondent said, “One of my main concerns is that the mediators won’t be able to pick up on subtle cues that might help them make a decision, such as body language or tone of voice.” Another concern for the remote nature was, “Not being able to read the room, being excluded by things unable to view outside the camera lens. Off camera conversations, etc.” Not surprisingly, this theme was also expressed in follow-up interviews that were conducted with fourteen participants before they participated in the remote mediation simulation. As demonstrated by this comment, “...remote mediation you don’t get to express yourself freely compared to in person. So, in person may have an edge.”

Technology Challenges

The second most frequent concern, mentioned fifteen (27.8%) times, dealt with technology challenges. The concerns were a mix of access to stable internet and how easy it would be to participate in the remote process. One survey responder shared a poignant statement,

Being able to get into the meeting or whatever it might be. Also, I'm 74 years old, and I do not like 11-digit² ID numbers. I just can't remember that many numbers in a row. Even if I write them down in braille, I can't always put them in, in time to get into the meeting. I am not really a Zoom lover.

This theme of technology challenges was also expressed during the interviews, "...what is the learning curve, will I get step-by-step instructions before a mediation?" The flip side of not having instructions or being prepared was also raised; "Technologically, when the parties are not well prepared. Settlement could be lessened..."

Confidentiality/Security

Six (11.1%) comments were made that dealt with confidentiality and security concerns. For example, "My biggest concerns with remote mediation would be the potential for compromised privacy, especially given that the technology used is mostly cloud-based."

Cost

Cost regarding access to the necessary tools, such as computers and software, was mentioned three (5.6%) times.

No Concerns

It is worth noting that thirteen (24.1%) survey responders said that they had no concerns.

Implications for Courts

Given the concerns identified above, an intake process should be conducted with each party to make sure they are offered the best process format for their needs and case. Courts should, at minimum, have each active mediator provide an example of their own intake process or adapt the attached intake questions to their needs, see Appendix A for intake questions focused on ensuring accessibility as part of a thorough intake process.

Courts should remind all mediators that under Maryland Rule 17-106 Remote Electronic Participation, their conversation with the parties to determine which process is best should also provide an opportunity to make sure their process is accessible. Ultimately, each party must decide what forum is most appropriate.

Given that 31.5% expressed concern over the remote nature of the process, mediators should explore with participants what type of device they would use to participate. If there is a concern from a party regarding the loss of non-verbal communication, that issue can be explored with them to help them make an informed decision. For some, a smartphone screen may

² Minor edits were made to quotes to facilitate reading, such as adding a dash, comma, or spelling. If an edit had the potential to alter the substance of the sentence, brackets were used to indicate the addition, such as the addition of a word to facilitate reading. Otherwise, the language of the participants was not changed, to reflect their voice.

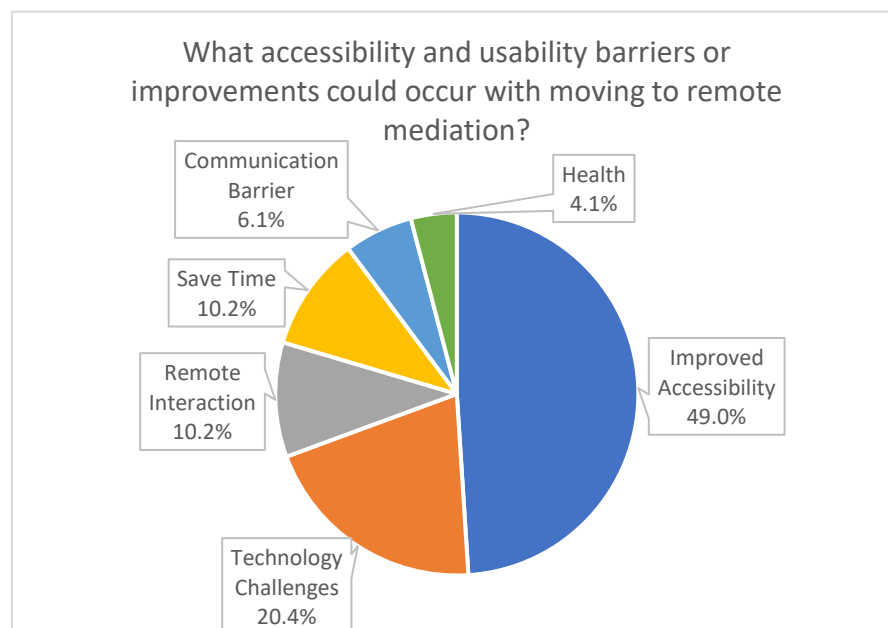
contribute to the problem of loss of non-verbal communication. Would both parties agree that cameras need to be on at all times to help address this issue?

Courts should consider asking their mediators:

- How do they address confidentiality/security when providing remote mediation?
- If parties have questions about how to use the remote technology, does the software provide how-to guides that are clear for people with and without disabilities?

Perceived Potential

While understanding the concerns that people have before trying remote mediation is important, it is also important to understand the potential benefits people may expect from



remote mediation. A neutral survey question was used to gain insight by asking participants, “What accessibility and usability barriers or improvements could occur with moving to remote mediation?” Six themes emerged from the sixty-nine people who responded, with thirty-six comments describing improvements and thirteen describing barriers. All themes discussed were

improvements except for two: technology challenges and communication barriers. This resulted in a split of 73.5% improvement-focused comments and 26.5% barrier-focused comments. There were an additional seventeen responses that were not clear and eleven that responded not applicable; these twenty-eight responses were not part of the analysis. Thus, the forty-nine improvement and barrier responses were used in the analysis.

Improved Accessibility

Twenty-four (49.0%) comments were made about improved accessibility with remote mediation. For some, the remote nature improves accessibility through simplicity, “Being able to have a private duty nurse [when] needed for medical purposes. More flexible and accessible.” Another comment spoke to all users, regardless of mobility issues, “Easy to set up and start.” One person saw the positive potential, but also the need for thoughtful implementation, “Moving to remote mediation will help overcome barriers to access and usability. However, audio, visual, and cognitive disabilities need to be considered.” The interviews conducted after the survey provided more detailed examples. “Avoiding inclement weather. Also, the potential cost of

transportation...wheelchair...isn't always accessible parking...are your doors accessible? Avoiding these issues are helpful.” And, “If someone has a physical disability, it's more cumbersome to leave the house, so at home they may be more comfortable. Bathrooms are not always accessible either, so it's easier at home than in public.”

Remote Interaction

Five (10.2%) survey responses focused on a positive aspect of remote interactions. They “Make me more relaxed,” one person noted. The underlying nature of this theme is that the distance and not being in the same room can help to diffuse a tense negotiation, “I would say less conflicts, and it's an easy way to negotiate calmly.” The quote below comes from an interview, providing more detailed context for this theme,

Access and comfortability are important, and some disabilities are enhanced based upon the environment. The situation and environment can be intimidating. For example, someone with autism or high anxiety may not respond as well in a courtroom or in a mediation as they would at home. Going remote broadens the ability to communicate. It also reduces strain on the system, time, schedules, and participants. Safety is also another advantage.

Saves Time

Five (10.2%) people mentioned this theme in straightforward language, “It saves time.”

Health

Health was mentioned twice (4.1%), for example, “During difficult times requiring only essential travel, social distancing and self-isolation, ‘face-to-face’ mediations may be difficult, if [not] impossible to achieve.”

Technology Challenges

Concerns with technology were mentioned 10 (20.4%) times, such as, “Some people have poor internet connection and also disruption from where they are.” Another response was, “Access to spaces that provide good Wi-Fi connection and access to community computers for those who do not own a laptop and desktop.”

Communication Barrier

Communication barriers were mentioned three (6.1%) times, with one response stating,

The lack of direct contact with the broker, which can lead to miscommunications or misunderstandings - The possibility that the broker may not understand what is needed or how to best meet your needs - The fact that there is no human interaction during the communication process can make it difficult for users to feel comfortable asking questions or expressing concerns.

This report assumes the author is using the term, “broker” to refer to a mediator.

Implications for Courts

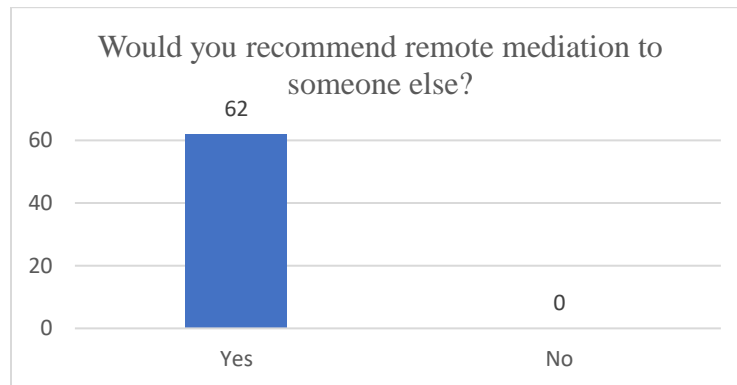
Clearly, people believe that remote mediation has many potential benefits. However, courts and the Judiciary still need to work in a world where access to stable internet and devices such as smartphones, laptops, and computers is not universal. A remote mediation participant who has large dual monitors and high-speed internet will likely have a different experience than an individual calling in on a telephone. How does access to justice balance potential disparities? In some cases, it may be in the parties' best interest to participate in remote mediation, even if they don't have access to the same resources. In other cases, they may be worse off. While parties with attorneys may be assisted to make an informed decision, the Judiciary and courts may want to develop a series of questions to help self-represented litigants decide on their options.

In larger jurisdictions, there may be value in a relationship with libraries that can provide a computer and private room. A local library may provide an environment that is conducive for participants, less stressful, and more convenient than the courthouse.

Communication barriers will be explored more in the next section when participants and mediators share their insights post-remote mediation. While communication barriers need to be considered, as one respondent stated, "Going remote broadens the ability to communicate."

V. Perception of Remote Mediation Based on First-Hand Experience

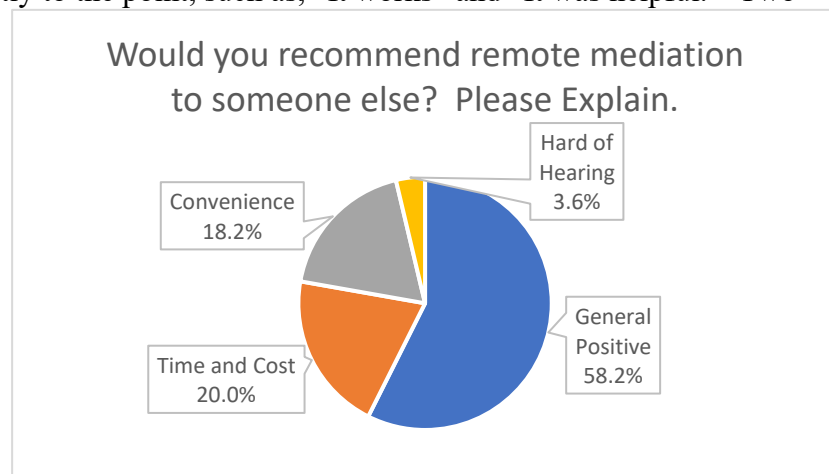
Two-party remote mediation simulations were conducted thirty-one times, resulting in sixty-two participants. All sixty-two (100%) participants responded to the post-simulation survey question, “Would you recommend remote mediation to someone else?”



“Yes,” was marked by 100% of those who participated in the remote mediation. When asked to, please explain, sixty-one (98.4%) responded and four themes emerged: general positive comments, time and cost, convenience, and hard of hearing. The sixty-one responders made fifty-six distinct comments. One was a single comment (not a theme). Thus, for the purpose of the theme analysis, fifty-five responses could be analyzed. There were four comments that were unclear and were not part of the analysis.

General Positive Comments

These comments were mentioned thirty-two (58.2%) times in the survey responses. Many comments spoke directly to the point, such as, “It works” and “It was helpful.” Two broader comments were, “Yes, because it is convenient, faster, agile, concentration and focused, safe and private, and open to feel comfortable from their own space.” Another respondent said, “I think for people with or without a disability, this is certainly a far much acceptable way to solve conflicts.”



Time and Cost

Time and cost were mentioned eleven (20.0%) times. For example, “It has benefits in time and in reducing the cost and the issues with drivers.”

Convenience

This theme was mentioned ten (18.2%) times, “It is much more convenient as you do it at the comfort of your own home.”

Hard of Hearing

Hard of hearing was only mentioned twice (3.6%), but the points are important for the courts to consider, “It could be very beneficial for those who are hard of hearing when closed captioning is used because there is so much missed in in-person situations like this one and these conversations offer too much to risk missing anything.” The other comment was, “I would recommend it, but I would want there to be a more concerted effort to ensure that captions are set by default rather than a request made by the user.”

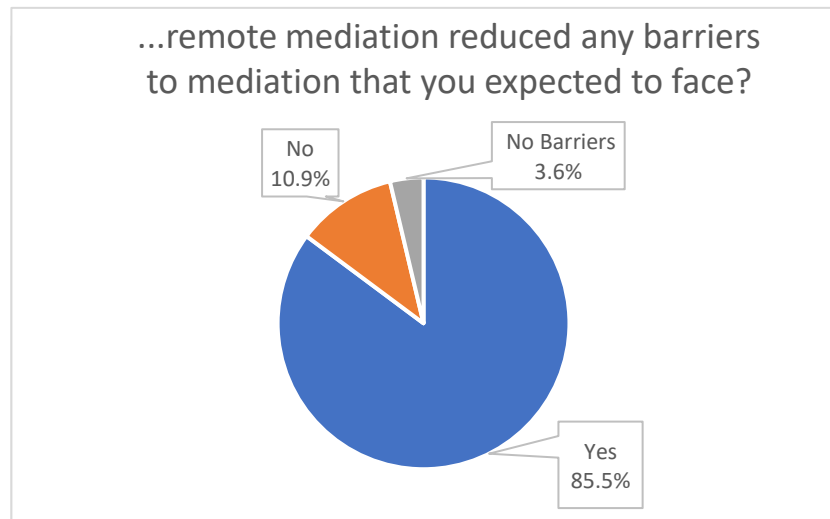
Single Comment

While all respondents said they would recommend remote mediation to others, one person with a visual impairment did share their preference for in-person mediation, “Remote probably isn't for everyone, and personally, I would rather be in person if only to get the feeling of what is going on since I can't see anyone! However, there are people who really could benefit from doing this remotely.”

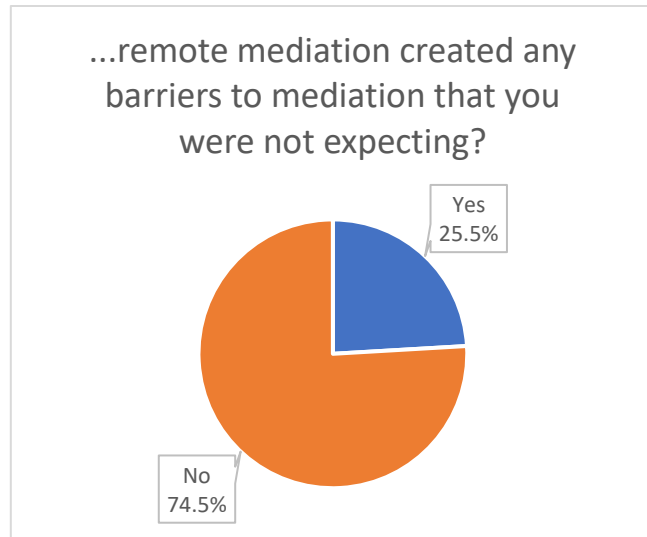
Expected and Unexpected Barriers?

Another way the research checked for barriers with remote mediation is that after the remote mediation simulation, all sixty-two participants were asked two related questions. First, “After participating in the remote mediation simulation, did you find that remote mediation reduced any barriers to mediation that you expected to face?” For the first question, “reduced any barriers...that you expected,” of the sixty-two respondents, forty-seven (85.5%)

responded, “Yes.” Six (10.9%) people answered, “No.” Two (3.6%) people wrote, “No Barriers.” Eight responses were not clear, resulting in fifty-four analyzed responses.



Second, “After participating in the remote mediation simulation, did you find that remote mediation created any barriers to mediation that you were not expecting?” For this question,



“created any barriers,” of the sixty-two people that responded, forty-one (74.5%) responded, “No”. Fourteen (25.5%) people answered, “Yes”. Seven people had responses that were unclear. Thus, there were fifty-five analyzed responses. Analyzing the affirmative responses, poor connection by another party that impacted the mediation process was mentioned three times. The remote format was discussed three times as a barrier, “Limited non-verbal cues...” impact ability to fully communicate with the other party. Another person reported experiencing “screen fatigue

because I focused on my screen for a long time.” Two people mentioned technical issues without specifying what they were. One person said, “There was a challenge for the mediator in navigating how to enable captions for Zoom. It is unclear if it was not enabled at the administrator level or user error.”

Participants’ Advice for Others

Participants were also asked, “What would you tell others with disabilities to consider as a participant in a remote mediation?” This question had a 98.4% response rate, with sixty-one responders. Thirty-eight comments were positive but without specific details. For example, “That it is a very effective and convenient method”; and “It is perfect especially if you suffer physical disabilities.” The bullet points below are a sampling of sixteen comments that had more specific advice. Six comments were unclear and one response said, “None.”

- “Confirm that the mediating program is comfortable using captions and knows how to enable them.”
- “I can comment only on the situation of deaf and hard-of-hearing people who use speech... it would help that individual to have prior experience with Zoom to know if the CC [closed captioning] will accurately reflect their speech.”
- “Ensure you have a backup for closed captioning. Consider having someone available to help you in-person on your end if things do not flow as anticipated.”
- “Use captioning on Zoom, it’s pretty accurate. Technology has changed a lot these days.”
- “To have good connectivity.”
- “Consider internet connectivity, be able to use video conferencing well, prepare well.”
- “Consider being in a rather quiet environment and be sure to follow the proceeding. In case it's not being recorded.”

- “They should all be confident and present their views in a clear way. State all the special assistance they will need prior to the mediation session.”
- “To consider it as a great option, and to let the leader or facilitator know ahead of time of any concerns that may arise.”
- “If I was offering advice to a disabled person who wants to participate in a remote mediation, here are some suggestions to consider: Communicate your accessibility needs: Inform the mediator and other participants about your specific accessibility requirements well in advance. Clearly express any accommodations you might need to ensure your full participation, such as closed captions, sign language interpreters, or any specific technology or equipment.”
- “I’ll say that it is important to receive a guided tour and test several times before the sessions.”
- “To be focused. To be consistent. To be vibrant.”
- “I would advise that nobody undermines themselves but believe and try to discover that hidden skill in them.”
- “To open up and share ideas and thoughts.”

Another way to gain insight was asking the question, “What are the three most important things you would want someone with a disability to know about when considering remote mediation?” Again, all sixty-two people responded. The comments listed for the first of three responses were positive: “It is efficient.” “It is convenient.” And, “It saved time.” In this era of communicating from almost anywhere, one person stated, “Make sure you will have privacy so be in a controlled environment.” Another person said, “They can air views without discrimination.”

The second most important thing to share had fifty-nine responses. Same as above, general positive aspects were mentioned. Four comments stood out: First, “Use of webcams.” Second, “It eliminates fear of being discriminated.” Third, “Always communicate your needs before the mediation to make the process comfortable for you.” Fourth, “That as long as we work with courts to ensure its accessibility, remote ADR could work well for us as blind people, eliminating barriers to the courts.”

The third most important thing to share had fifty-nine respondents and continued the positive theme. Two comments stood out as different. “Request the mediator for all communications to summarize them in perfectly American English accent speech so that if the CC do not do great with any one of the hearing impaired participants, the mediator can repeat everything - this is in line with the mediators role anyway - to summarize and clarify and make sure all understand the points each are making.” And, “Freedom, talking without being judged or looked at weirdly.”

Implications for Courts

While there are important considerations for remote mediation and people with disabilities, 100% (sixty-two) of participants in mediation said they would recommend remote mediation to someone else. Clearly, remote mediation brings value to the public and the courts. And there are still ways for the remote mediation process and service to be improved to maximize access to justice. Many of the insights from those with disabilities can help us improve our services to those with and without disabilities.

An area for improvement is doing our best to ensure that all mediators are using a system that can provide closed captioning, mediators are skilled in using it, and can help participants take advantage of it if they choose. An improved practice for mediators would be to have the closed captioning on by default and let participants know how to turn it off on their end if they find it distracting. If one or more participants have an accent, the mediator should monitor the closed captioning and to see if it is adequately capturing the conversation. Some mediators had success by repeating what was said, and checking in to see if that was adequate, potentially providing another voice for the closed captioning technology.

A better option would be to assign a Computer-Assisted Real Time Transcription (CART) provider for the session. CART is a person-based service that transcribes conversations in real time. CART providers can participate remotely to add live captioning or can serve in person using a display on which the person requesting the service can read the transcription. In Maryland, CART providers can be scheduled for court-ordered events, including mediation, by the court's interpreter coordinator, with costs paid for by the Judiciary.

Finally, intake should identify if an ASL and/or Certified Deaf Interpreter is needed, and mediations can be scheduled as needed to provide the accommodations. The court's interpreter coordinator can assist with the needed arrangements.

In pre-remote mediation simulation interviews, people expressed concerns about internet connectivity. That issue did occur for some. While the courts and the Judiciary cannot change the internet infrastructure, steps can be taken to minimize the issue. Mediators or courts can conduct a test run with participants ahead of the remote mediation. If the planned location does not have stable internet, does the party want to connect from another location, or should an in-person mediation be scheduled?

Participants' Recommendations on how to Support Users who have a Disability

Most of the feedback for the Judiciary focused on promoting remote mediation to the disability community, so people know it is another tool that could be useful. As discussed in the above section, Implications for Courts, the availability of interpreters was specifically mentioned.

There was also feedback for mediators. The general theme was one of mediators needing to "Be empathetic and patient during the sessions." More specifically, one participant said, "I had a great experience with my mediator but if I had to say anything make sure they are sensitive with people with speech impairments or English as their second language." Awareness of

disabilities was also raised. While comments were generally positive, one person did state, “They can check their ableist attitudes.” Finally, another person said,

IM SPEAKING ONLY OF DEAF-HOH [Hard of Hearing] PEOPLE - NOT PEOPLE WHO HAVE A DISABILITY - YOU ARE THINKING THAT ONE SIZE FITS ALL DISABILITIES - THIS WILL NOT BE TRUE - THE MEDIATOR CAN UNDERSTAND A DEAF-HOH PERSONS SPEECH BETTER THAN AI-CAPTIONS CAN - AND IF SO, CAN MAKE THE CAPTIONED IDEAS CLEAR IN THE FACE OF AI-CAPTIONING FAILURE. [All caps was used by the responder for this question response]

While these issues were discussed in the Implications for Courts section, it is worth noting that the courts and Judiciary face the perpetual challenge of court-wide and statewide best practices for all while honoring the sentiment that one size does not fit all. While no single response is adequate, courts encouraging mediators to conduct pre-mediation intake that incorporates questions from Appendix A would be an improvement.

Final Feedback from Participants

Contrasting to initial concerns raised before trying remote mediation, two sentiments stand out. One, “The fact that it isn’t so different from face to face. Remote is comfortable, even much better than f2f.” Second, “I never thought it was possible to connect mediation online and be successful. Now I realize it is possible. For disabled, introduce to a new platform, solve our cases, from home.” Finally, when asked if there was, “Anything else you would like to share?” some noteworthy responses are below:

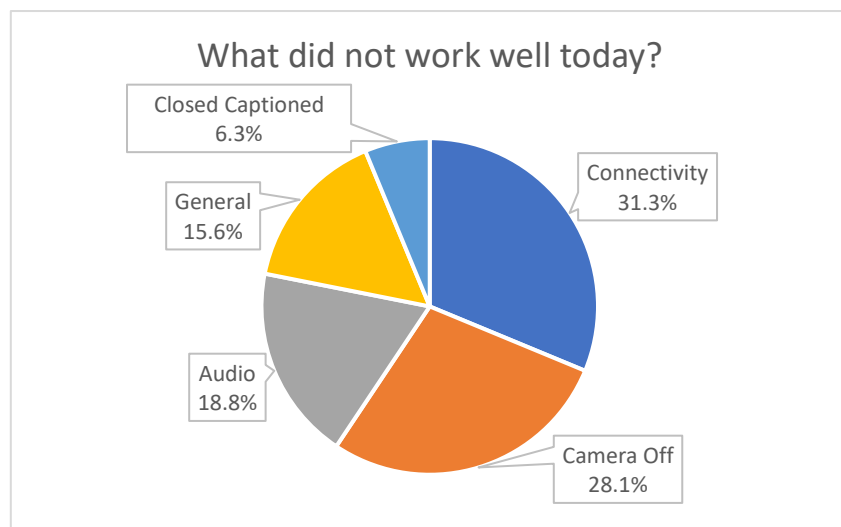
- If there is ever a photo that has to be shown, the mediator will need to tell the blind person what it is. A picture of a dent on a car, describe. Or graphic, chart.
- People with disabilities, costs sensitive, I know people with disabilities like myself, costs and amount we earn, so access. Affordability should be kept in mind.
- Hopeful for resolution. Don’t have to be in room with party, less stressful. Thinking back to my divorce, would have been better online.
- Caution: avoid simple, cost-effective; remote is not one size fits all. Take from notes of positive comments and share.
- ... Remote mediation and Zoom captions will not serve all. That being said, the simulation was saved through the mediator’s technique. Mediator was repeating back/summarizing. It solved the untenable captions... Possible that remote is better. Also courtroom situation is more threatening than remote. People in own home or office. Less intimidating, less hostile, less anxiety provoking. Appropriate since goal is to put down barriers is good for mediation... We didn’t use ASL but I’ll share my insights. Using an ASL interpreter, usually get the facial expression. ASL, three dimensional, takes place in space. More difficult to read and understand on a screen than in person. On screen, size of hand smaller, so if they spell words are harder to read. This may [be] because ASL is my second language. I tend to turn on the caption, read and look at ASL interpretation. English is centuries old, more precise language than younger ASL. I find precision important to me. Born deaf may not like or agree...

Insights from Mediators

One of the survey questions for the mediators after the remote mediation simulation was, “What worked well today?” Thirty-two out of thirty-two mediators responded. Overall, responses were positive, with many saying that the technology on their end worked well. Some experienced challenges when one or both participants had connectivity issues. Three responses addressed the importance of engaging participants before the session to ensure the technology would meet everyone’s needs and allow time to work through any issues. “Understanding ahead of time how the participants wanted to engage in the mediation, what technology they were using, and checking in ahead of time regarding any needed accommodations or supports.”

In contrast, the mediators were also asked, “What did not work well today?” The overwhelming responses from the thirty-two mediators were focused on technology. There were thirty-six distinct comments and four were not clear.

Thus, for the purpose of this analysis, thirty-two responses could be analyzed. Within the Technology theme, there were five subthemes: Connectivity, Camera Off, Audio, General, and Closed Captioned.



Connectivity

Connectivity had ten (31.3%) comments, all focused on the participants' challenges with internet connections resulting in image freezing, audio issues, and parties having to drop out multiple times, and rejoin the Zoom-based mediation.

Camera Off

The next subtheme, Camera Off, was mentioned nine (28.1%) times. Multiple mediators expressed the challenge of one or both participants having cameras off, resulting in the loss of non-verbal communication, “...couldn't tell if they were talking but we couldn't hear them, couldn't tell if they were engaged/listening, couldn't see facial expressions to see if they were confused or upset/angry, or agreeing...”. Another mediator expressed concern about one participant having the camera on and the other off, which “creates a potential imbalance.” Some attributed the decision to have a camera off to internet connection limitations, location of the participant, and personal choice. An important comment from one mediator, “Similar to yesterday, both participants [were] unwilling to turn their camera on. In hindsight, it is possible if they had a disability, they were not willing to be seen on camera.” This comes up against a comment from a participant during a focus group, “Even though I don’t rely on lip reading, it is helpful. I would suggest, mandatory to use webcam.”

Audio

Audio issues were mentioned six (18.8%) times, in the context of bad audio connections negatively impacting mediation.

General

Five (15.6%) comments fell into the General theme. Two comments have implications for this report. First, “I am not sure it is a today thing, but I needed multiple technologies to communicate with the parties if I didn't want to share my cell phone. One person wanted texting (Teams) for intake and another person did not have a phone and therefore could only use Zoom.” Second, “There were a lot of ideas brainstormed. I read them out loud, but it was hard for the parties to get them all without an ability to share them on a document or whiteboard.”

Closed Captioning

The final subtheme, with two (6.3%) comments, was Closed Captioning. One mediator said;

Despite testing, initially the CC was not working for my one participant. We were able to troubleshoot this issue and run the simulation. That said, the quality of CC for those who are deaf or hard of hearing is adequate at best. I needed to provide additional clarification to both participants on their comments since CC was not quite accurate. Luckily this was an easy solution; however, in some cases this would be less than ideal and could frustrate parties trying to work through issues in mediation.

Another mediator found out that their Zoom account level didn't support closed captioning, but one of the participants did, so the participant became the Zoom host. The mediators and parties were able to choose the platform, all used Zoom. Thus, those who used closed captioning were using the Zoom closed captioning system. While none made the request in this study, in Maryland a participant in a court-ordered ADR processes can request that the court provide CART services rather than relying on Zoom's auto-captioning feature. For individuals who are fluent in ASL, providing an interpreter may be preferable.

The mediators were also asked, “Would any training, tools, or resources for you or the participants have helped the simulated mediation session go more smoothly? If yes, please identify below.” All thirty-two mediators responded and were split on this question, with eighteen responding “No” and fourteen saying “Yes”. Four mediators felt a pre-mediation session would have been helpful, “Pre-session that would have identified levels of comfort with the technology and helped mediators be ready to help in the session.” Three mediators discussed the need to understand Zoom better, particularly troubleshooting it and how to work with parties that aren't experienced with using Zoom. The suggestion of specific accessibility training came up twice. First, “I also believe that training mediators on being aware of invisible and visible disabilities is critical because it could lead to better preparation for sessions and therefore potential outcomes of the process.” Secondly, the mediator should consider, “The best way to engage someone with a visual impairment when you would usually share a screen.” For example, when working with individuals who have limited vision, it is essential for speakers to

identify themselves when speaking, especially if there are multiple people in the session. One mediator said that “a list of standard questions to help mediators determine technology needs and capacity as well as required accommodations and supports would assist.” Another mediator said training for mediators is needed to help participants work through technology issues. Finally, a mediator indicated that participants should avoid use of phones, have training on the use of a computer for mediation, or use a Zoom app on a phone.

This research also sought insight into possible ways to improve remote mediation. Thus, mediators were asked, “As the Judiciary works to improve remote mediation services, what would you like us to consider in regard to technology and people with disabilities?” The importance of intake was discussed by several mediators. Some emphasized that a script should be developed on intake for mediators to use. Others said courts should conduct intake for the mediators. Regarding the use of phones, one mediator said, “I do not think mediation works if someone is just using their phone. I think if the mediator tries to share documents by sharing their screen you will not be able to access it as well over a phone.” The complexity of cameras was highlighted by contrasting suggestions:

- “...making sure they fully understand why having a video camera on can be important!”
- “The Judiciary and mediators should consider some people with disabilities might not want to be seen on camera.”

A fundamental role of the Judiciary is to balance competing interests and seek just resolutions. As technology advances, new conflicts emerge that may require judicial guidance. One of the Judiciary’s long-standing practices has been in-person, face-to-face communication, which has been central to Maryland’s court system for centuries. However, remote proceedings—particularly remote mediation—offer new ways to access justice.

Yet, does this expanded access to justice come at the cost of meaningful communication? How important is it for cameras to be on during remote mediation? Could individuals with visible disabilities present their cases more equitably without video? In cases flagged for potential intimate partner violence, should certain cases be scheduled for remote mediations with cameras turned off? Should courts require cameras by default unless an exemption is granted?

VI. Conclusion

Based on the feedback, remote mediation can address traditional barriers that some with disabilities experience when having to travel and mediate in court. When 100% of the sixty-two participants say they would recommend remote mediation to someone else, that is noteworthy. That said, not everyone experiences remote mediation the same way, and there are some options for courts and the Judiciary to try in order to further increase access to justice.

For many with physical mobility issues who have access to computers, stable internet, and the ability to use the technology, remote mediation appears to provide the greatest benefit with the fewest new challenges. Individuals with sight and hearing issues have shared that remote mediation has value for them and others, and there are ways to address some barriers they experienced. For this reason, courts might require roster mediators to only use video conferencing systems that have closed captioning ability and have it turned on by default. Court-referred mediation cases are eligible for court-paid interpreters. Mediators should let their ADR Program Manager know when an interpreter is needed. When screens are being used to share information, it should be standard practice that the mediator ask the presenting party to describe the information or for the mediator to provide a description and ask if the description is accurate. If a party is using a screen reader, plan ahead to determine how any information can best be shared.

While much of the focus of this report has been on the physical aspect of parties communicating remotely, it is worth noting that multiple participants raised the cognitive benefits for some to engage in mediation remotely. The positive aspects of being in a familiar environment that maximizes ease of functioning and focus. The following experience that a participant shared during a focus group highlights the power of providing remote access to justice,

I was in Court [outside Maryland] last year, and it was terrifying. For a citizen, in a courtroom, where there was a judge. No one is there to make friends. Flat expressions, not welcoming, harder to [get] non-verbals which can be important for a deaf person. So that is a big benefit for remote. I had a case with no lawyer. I did not want to use an ASL interpreter. I'm fluent, but not my native language. In court situation, I wanted everything in English. I asked for a live captioner, where I can look at my personal screen. They said yes, but none in the courtroom when I showed up. I had to look at the court reporter's screen, but very awkward. Even if the courtroom has accommodations, not an ideal situation, even in a courtroom, anxiety provoking. So, if the remote can be set up properly, good. If you can, successfully anticipate the needs of people and provide resources.

As a participant shared earlier, one size does not fit all; what addresses the barriers for one person may not for another, even if they have similar disabilities. Improved intake and normalizing technology pre-test run for mediators will help courts and the Judiciary to provide even greater access to justice.

Remote mediation has many benefits for people with and without disabilities. The questions and concerns raised in this report highlight the need to examine remote mediation carefully to advance the Judiciary's mission to provide fair, efficient, and effective justice for all.

VII. Appendix A

Remote Mediation Intake Protocol for People with Disabilities

This protocol is designed to make remote mediation services as accessible and inclusive as possible for individuals with disabilities. The intake process should identify and address any accommodations needed to facilitate effective participation in a virtual setting.

Initial Contact and Pre-Screening

- Obtain basic information from the participant, such as name, pronoun, contact information, and preferred communication method.
- Ask whether they require any accommodations for the remote mediation process.
- Offer multiple ways to complete the intake process (e.g., phone, email, video call, or accessible online forms).
- Provide clear instructions in alternative and accessible formats if requested (e.g., large print, Braille, audio, plain language, or easy-read format).
- Ensure email communications with participants are screen readable. For example, if you use a Judiciary signature box (these may be or may contain images), be sure to add alt-text to the image in your email.

Identifying Accessibility Needs

- Ask: “Do you have any accessibility needs that we should be aware of to ensure your full participation in the remote mediation process?”
- Provide examples of accommodations, such as:
 - Closed captioning or sign language interpreters
 - Screen reader-compatible materials
 - Additional breaks for fatigue management
 - Flexible scheduling options
 - Allowance for a support person or advocate
 - Accessible virtual mediation platforms
- Document and confirm requested accommodations with the participant.

Technology Assessment and Support

- Confirm if the participant has reliable access to the necessary technology (e.g., computer, smartphone, stable internet connection).
- Offer a test session before the mediation to troubleshoot any issues.
- Ensure familiarity with virtual meeting platforms (Zoom, Microsoft Teams, etc.).
- Provide step-by-step instructions for joining remote mediation sessions.
- Offer technical support before and during the session if needed.
- Discuss alternative communication methods if internet issues arise (e.g., phone mediation, chat-based support).

Pre-Mediation Preparation

- Share a clear explanation of the mediation process, roles of participants, and expectations.
- Be sure all documents and materials are accessible (e.g., digital formats, large print, and audio descriptions).
- Discuss who will describe images, charts, or other graphics if applicable.
- Remember that individuals with limited vision may request to bring their own visual interpreter or aide, and participants in court-referred mediations can be provided a visual interpreter.
- Review the Judiciary's [Guidelines for Readers & Scribes](#) and [Guidelines for Visual Interpreters](#).
- Explain confidentiality policies and address concerns regarding privacy and security in a remote setting.
- Provide an opportunity for participants to ask questions before the mediation session.
- Confirm availability of private breakout rooms for confidential discussions.

Mediation Session Accommodations

- Confirm that requested accommodations are in place before starting.
- Conduct additional check-ins as needed, especially for longer sessions.
- Offer a structured format to support individuals with cognitive disabilities (e.g., summarizing key points, allowing time for processing and responses).
- Allow for written or alternative communication methods if needed.
- Maintain flexibility to adjust accommodations during the session based on participant feedback.
- Monitor for screen fatigue and schedule breaks accordingly.

Post-Mediation Follow-Up

- Ask for feedback on accessibility and the effectiveness of accommodations provided.
- Provide mediation summaries in accessible formats if requested.
- Offer additional support or referrals if needed.
- Identify areas for improvement in future remote mediation sessions.

Mediator Training and Awareness

- Train mediators on disability awareness and accessibility best practices in remote settings.
- Train mediators on using accessibility features in mediation platforms.
- Train mediators on the use of interpreters, for example, visual or ASL interpreters.
- Train mediators in describing visuals in an impartial manner when working with individuals with limited vision.
- Encourage awareness of invisible disabilities and the importance of a supportive environment.
- Develop a standard screening tool for mediators to assess accessibility needs in advance.

- Provide resources on best practices for inclusive virtual mediation.

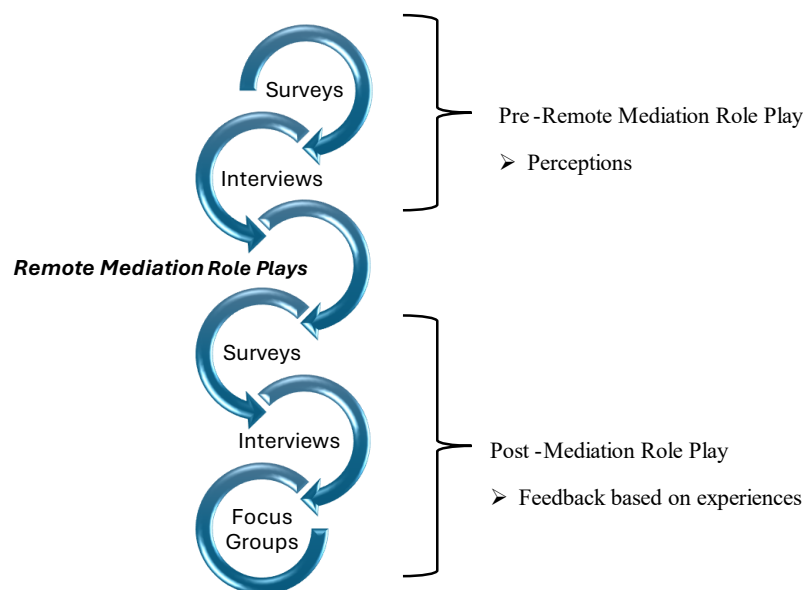
Compiled from publicly available best practices and guidelines such as: the Americans with Disabilities Act (ADA), Web Content Accessibility Guidelines (WCAG), the Rehabilitation Act of 1973 (Section 508), and the National Center for State Courts (NCSC) accessibility guidelines.

VIII. Appendix B

Research Design

This research included an open call for people who identified as having a disability to participate in the study. The research team focused on getting the word out through disability advocacy groups both in Maryland and with a national reach. Mediators who had extensive experience as mediators were asked to participate, with the goal of reducing the concern that a problem was due to an inexperienced mediator who was struggling with the mediation process. Both participants and mediators were offered compensation for their participation. One hundred participants responded to a pre-remote mediation simulation survey; data cleaning resulted in seventy-two usable surveys. Interviews were conducted with fourteen participants. Then two-party remote mediation simulations were conducted with sixty-two participants, resulting in thirty-one remote mediations. All sixty-two participants responded to a post-remote mediation survey. Interviews were conducted with thirteen participants. The remote mediations were conducted by thirteen solo mediators and five co-mediator pairs (ten mediators), some conducted multiple mediations, and all mediators responded to their surveys. A focus group was conducted with five mediators. Two focus groups were conducted with participants, with each focus group having three participants.

This approach provided perceptions before the remote mediation and after. The surveys ensured that the same questions were asked of all participants. A semi-structured interview allowed for the same questions to be asked and allowed for participants to provide other information they considered relevant. Finally, the focus groups allowed participants to hear each other's experiences and thoughts and react to them. While time-intensive, this approach maximized the opportunity for insights and unique perspectives, which was important given the lack of existing empirical research to guide question design and structure.



IX. Appendix C

Additional Informative Quotes from Focus Groups

- a. [Participant] We make sure the first call we run, it works. No issue in my role play. When people do a screen share, they don't describe what they are sharing. Don't describe photos. The state of Maryland agencies often have no clue, don't run chat, should just run Q&A. Should have a clue who is on the call, and set up properly. I enjoyed the role play. In the court system, you need to know what you are doing. After 33 years [ADA 1990], you should know. There isn't any reason not to be prepared today. This is a good call, this is great. Different people use different things, even when they have the same disability. The chat function can be a big issue/challenge. Talking over people can be an issue for some, not me. Description of photo [alt text].
- b. [Participant] When I was in my role play, there was a mediator and opponent. I'm a delayed deaf person. Native language English, deaf later in life. My voice became lower and some of a deaf accent. Caption here looks pretty accurate. The person I was on the role play with, he did not introduce himself or describe disability. Closed captioning couldn't capture what he was saying. Even with this group, not 100%, but intelligible. With the other person, couldn't figure out what he was saying. The mediator could understand. The mediator reframing helped. The mediator had a more standard speech that the CC could work with. But it was not really accessible to have one person speak with their original voice and thought, and another person's voice summarized. I want to share something. Zoom can work and the Judiciary could hire a live captioner. The mediator could understand, but live captioner would have helped. The complainant and respondent would have to know what is needed. Zoom or live captioning. In a formal, legal procedure, I don't think you can rely on a mediator to summarize and repeat. Zoom only works if people only have a standard way of speaking. Deaf accent or other accents may not be able to work.
- c. [Participant] In my case, English was a second or third language for the other participant. I could understand him. I don't have sight, so I could focus on words being spoken.
- d. [Participant] I applaud the MD Judiciary for even looking into this. That is professionalism personified. ADA Title II (state and local government) requires the viewpoint and requirements of the person with the disability is primary. Not what the judiciary or state government thinks. Title III requires people to consider. Title II requires their accommodation request to be the determinant factor. After the study is done, I think it is worthwhile to highlight that fact, not the decision of the Judiciary but the decision is the person with a disability.
- e. [Participant] This is the subjective experience, obviously captions don't have tone of voice or reflection. When you think about communication, when have an interpreter, they can capture it. A deaf person who is focused on visuals, this is harder on a screen. In person, more communication (body language, etc.).

Remote less. I don't know how you can translate that; it is what is. That might be something for parties to consider when selecting a process

- f. [Participant] This is great. I was in court last year, I couldn't hear what the judge was saying, had to constantly ask my lawyer what he was saying. Seemed to frustrate the judge. This allows me to hear and not have to ask questions.
- g. [Participant] Accommodations plainly listed, Statue of Liberty visit, not listed, have to call. No travel, for single parents,
- h. [Mediator] I work with attorneys, before simulation, no issues with Zoom. Since doing simulations with pro se, had a lot of stumbling blocks with technology. Internet, audio going in and out, not wanting to or able to use video (parties engaged?) Different than working with attorneys. Lose connection.
- i. [Mediator] Trainings that prepare mediators, both for existing mediators and new mediator training. Make the norm, don't make participants feel like outliers/excluded, changes needed for them. Have things in place to reach the maximum number of people we can. Then adjust when needed.
- j. [Mediator] I'm not opposed to a form. But think a way to have setup already through prep, training, and pre-mediation conversation. Some may not want to disclose. How to prep and hold mediation – help make people feel comfortable.
- k. [Mediator] Universal design can help meet needs. Giving some people screening questions for intimate personal violence can add some other questions. Judiciary online forms have small fonts and don't meet accessibility needs. Judiciary provides access and space (library or other private space). Keep working towards that.
- l. [Mediator] Inclusive model, trained, training should include, people shouldn't have to ask. Add supplemental for existing mediators.
- m. [Mediator] My biggest takeaway, is the access point for strong connection. Trained to ask the right question, would it be helpful if I read what is on my screen?
- n. [Mediator] I found the greatest barrier, the reluctance of participants to come onto camera. Helps with attaching to another human, see nonverbal communication too.
- o. [Mediator] I don't think unique to Zoom, I always have questions when different people engage in a process. One doesn't have a camera, others can use? Does everyone need to be in the same room? Our assumptions? There is a need for everyone to try and engage in the process in the same way. What is the impact of that assumption?
- p. [Mediator] We don't know why people chose to stay off-camera. Many reasons, maybe don't want to share personal space, don't have a screen filter, maybe scaring on the face?