

STATEMENT ON VIRTUAL PROCEEDINGS IN THE  
CIVIL JUSTICE SYSTEM

Advocacy in the 21st Century Committee

Approved by the Board of Regents  
February 2022

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# INTERIM STATEMENT ON VIRTUAL PROCEEDINGS IN THE CIVIL JUSTICE SYSTEM

The COVID-19 pandemic led to the rapid expansion of the use of remote video in the administration of justice. The technology was largely in existence before the pandemic, but lawyers and courts were forced to quickly adopt its broader use to keep the wheels of justice turning as the need for social distancing impeded the traditional way of holding depositions and appearing in court.

We are now two years into regular use of virtual proceedings and are better able to answer the question of what role, if any, the use of remote video technology should play in the administration of justice, even when current public health concerns no longer require it. This paper shares the College's present position on virtual proceedings in the civil justice systems in the United States and Canada, based in part from input we received from Fellows of the College.<sup>1</sup>

We use the words "present position" because this paper is not intended to recommend how and when remote video should be used in civil court proceedings for any specific period of time in the future. In January of 2020, few people would have envisioned the use of remote video in depositions and pretrial court proceedings, much less its use for fully virtual non-jury and jury trials. The Bench and Bar continue to learn about, and become comfortable with, the use of remote video in certain circumstances. As will be discussed below, experimentation on its use should not be discouraged, especially when the parties consent to it. Thus, we envision periodic updates to this paper as we learn more about the efficacy and impact of virtual court proceedings, but our position currently is as follows, in no order of particular importance.

1. Court Facilities. Courthouses and courtrooms should be designed, built, and adapted both to safely conduct in-person trials, even in times of public health or other crises, and to facilitate the use of remote video to conduct court proceedings. The College is aware of the funding issues faced by court systems in the United States and Canada, and thus knows that many appropriate modifications to existing courthouses and courtrooms will not occur in the short-run. That said, courthouses and courtrooms of the future should be designed and built with the knowledge that (a) public health concerns may limit safe in-person human interaction; and (b) remote video is likely to play an increasing role in the administration of justice, even in the absence of a pressing public health issue or other national emergency.
2. Equipment and Training for Judges and Court Staff. It is essential that judges and court staff have access to adequate equipment to conduct effective virtual proceedings, as well as ongoing training on how to use it. Many states and provinces have started this effort, but the future use of remote video technology in our courts depends largely on the ability of judges and court staff to become comfortable with using it.

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<sup>1</sup> The results of the survey are available in the [appendix](#). It will be important to the future of virtual proceedings that a coordinated effort be made to gather data about such proceedings and their effectiveness in administering justice.

3. Equipment and Training for Trial Lawyers. The trial lawyer who practices in any jurisdiction where virtual proceedings are foreseeable needs to have access to the equipment to be able to participate in virtual proceedings efficiently and effectively. Likewise, the advocate either needs to know how to use this equipment or have ready access to someone who does. The College recommends the resource “Remote Proceeding Advocacy” as a tool to learn the effective use of remote video technology.<sup>2</sup>
4. Civil Jury Trials. Absent consent of the parties, civil jury trials ordinarily should be conducted in-person, in a public forum that allows real-time access by the public. Witnesses, litigants, their lawyers, the judge, and the jury should be in the same room for the entire proceeding, except for those times when the jury is excused or deliberating or when an in-chambers conference is appropriate.

Nevertheless, assuming the courtroom has the appropriate technology to facilitate virtual testimony, a witness in a civil trial should be able to testify via remote video with the consent of the parties or, after appropriate notice, in the discretion of the trial judge. Relevant factors in considering whether to permit a witness to testify remotely are: the importance of the witness’ testimony, any legitimate health concerns of the witness, the cost of bringing the witness to court for in-person testimony, the technology to be used by all participants so as to ensure that the jury can adequately see and hear the witness and the examiner, and the ability to present the testimony via remote video without disruption to the proceedings. Courts have decades of experience with the presentation of testimony by video. The transition to remote video is a natural one, and could be even more effective than pre-recorded video, as it is made in real-time and allows parties to question the witness at the trial itself.

Numerous jurisdictions are experimenting with civil jury trials during which some or all participants are not physically present in the courtroom during trial. The experiments vary greatly, from remote jury selection only (thus eliminating the need to bring a full jury panel to the courthouse, knowing that all but a small number of people will be selected to serve) to fully remote trials (where all participants appear virtually for all aspects of the trial), with various alternatives in between. Assuming the parties consent to the procedure, such experiments are not only appropriate but can be a highly effective means of administering justice when public health concerns limit in-person proceedings.<sup>3</sup> The justice system must be open to considering new methods of performing its functions in society, and the best way to evaluate new methods is to test them over time.

5. Non-jury Civil Trials. An increased use of remote video technology presents less of an issue in a non-jury trial than in a jury trial. Of course, concerns remain about

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2 The paper is available at [https://www.actl.com/docs/default-source/default-document-library/advocacy-in-the-21st-century/2021-remote-proceeding-advocacy.pdf?sfvrsn=bd20176\\_4](https://www.actl.com/docs/default-source/default-document-library/advocacy-in-the-21st-century/2021-remote-proceeding-advocacy.pdf?sfvrsn=bd20176_4).

3 High-quality internet access, proper technology, and an environment conducive to serving as a juror continue to present challenges to virtual jury trials. So does the need, in some cases, for the jury to have direct access to physical evidence. Courts continue to experiment with ways to address these issues.

evaluating credibility, effective witness examination, document management, technology issues, and the like, when remote video is used during non-jury trials, but the principal difference is the lack of concern about maintaining a connection to, and the attention of, the remote jury. The trial judge is much less likely to be distracted by other matters than the typical juror and is much more likely to have access to adequate technology.

Should we move to virtual non-jury trials in all cases, even if there is no health or other pressing concern about conducting an in-person proceeding? We should not. While the administration of justice should not be chained to history, the fact is that conducting in-person non-jury civil trials is a part of the tradition of both the United States and Canada. Absent a current public health concern, this tradition should continue to be a significant feature of the administration of justice.

At the same time, however, our experience with remote video technology and virtual proceedings during the last two years tells us that courts, with appropriate technology and training, can effectively conduct virtual non-jury trials, especially those with relatively few complex issues and documents. Taking into account the considerations set forth in the College's "Conducting Nonjury Trials by the Use of Remote Video,"<sup>4</sup> a court can and should continue to conduct virtual non-jury trials during public health crises and under other appropriate circumstances.

Of course, a non-jury case need not be fully remote for video technology to be used at trial. In a non-jury civil trial, judges should be more open to allowing a witness to testify via remote video, after appropriate notice, on consent or at the trial judge's discretion after consideration of the relevant factors. Relevant factors for consideration in permitting a witness to testify remotely were discussed above as part of the discussion about jury trials.

6. Pretrial Court Proceedings in Civil Cases. The last two years have taught us that remote video can be used to decrease the cost and increase efficiency of our civil courts for pretrial activities. Many pretrial proceedings can be conducted via remote video, reducing costs attendant to traveling to the courthouse and waiting for a case to be called for hearing.

The following factors, in no particular order, should be taken into account in determining whether to have a pretrial hearing in-person or via remote video (assuming the court has the technology available to have a remote hearing):

- (a) The opinion of counsel. If counsel for the parties agree that a hearing can be conducted virtually, the court should attempt to accommodate the request unless there is a particular reason to require the physical presence of counsel or the parties, or if the public interest requires otherwise. (If there is real-

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This paper is available at [https://www.actf.com/docs/default-source/default-document-library/advocacy-in-the-21st-century/2021---conducting-nonjury-trials-by-use-of-remote-video.pdf?sfvrsn=7ed20176\\_2](https://www.actf.com/docs/default-source/default-document-library/advocacy-in-the-21st-century/2021---conducting-nonjury-trials-by-use-of-remote-video.pdf?sfvrsn=7ed20176_2).

time transmission of the virtual hearing to the public via the internet, this public interest factor should carry less weight.)

- (b) The nature of the issue(s) to be discussed at the hearing. As the complexity of the issues increases, the perception (and perhaps the reality) is that the need for an in-person proceeding also increases. Thus, for example, a case management conference in the “ordinary” case will rarely require an in-person hearing – a virtual video conference or even a telephone conference should suffice. A dispute over whether three interrogatories need to be answered can be addressed, ordinarily, in a remote or telephonic hearing. On the other hand, a dispute over whether the attorney-client privilege applies to seventy-five different documents where multiple reasons are advanced as to why it should, or whether the privilege was waived, may benefit from an in-person hearing. Likely, so too would a case management conference in a Multi-District Litigation (MDL) proceeding in a federal court in the United States which typically involves complex issues.

The same is true in regard to matters that address highly personal matters. For example, contested hearings to determine who shall serve as the primary custodial parent during pending divorce proceedings often involve very emotional issues and the outcome of the proceedings will personally impact all involved. These sorts of matters may require an in-person proceeding. On the other hand, if the issue of custody arises in the midst of a public health crisis that prohibits in-person hearings and there are allegations of physical or mental child abuse or other unsafe conditions in the home of one parent or the other, health and safety considerations may weigh heavily in favor of a virtual proceeding.

- (c) Whether testimony will be required and credibility of one or more witnesses is at issue. Some hearings – those seeking temporary injunctions and pre-trial support in domestic relations cases – frequently include testimony, and a credibility determination of the parties or other witnesses is necessary. Although the need for testimony should not mandate an in-person hearing, it is a factor to be considered in whether a request for an in-person hearing should be granted or ordered even if the parties think it unnecessary. Some believe witness credibility is best determined with in-person testimony. Others believe that credibility determinations are actually easier to make on video because video permits the judge to see the witness’ entire face (rather than the side-view permitted by the layout of many courtrooms) and the ability to zoom-in on the witness. Thus, the fact that testimony is expected for the hearing is but one factor in determining whether the hearing should be held virtually or in-person.<sup>5</sup> As our experience with virtual hearings

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5 As mentioned elsewhere in this paper, it is important to study the use of virtual proceedings and gather information about the experience of judges, lawyers, and litigants. The ability to evaluate witness credibility, as well as the ability to test it via cross-examination, is particularly worthy of study.

increases, and as evidence of the impact of virtual testimony versus live testimony in various proceedings accumulates, we will be even better equipped to weigh this factor.

- (d) The history of prior remote video proceedings involving the parties and/or their counsel. Prior experience of the court with the parties and/or their counsel, in the matter at issue or in other matters, may impact the decision whether future remote video hearings are in the best interest of justice.
- (e) The significance of the hearing to the overall case. If the resolution of the motion may result in termination of the case, there may be a benefit to an in-person hearing, if only to give the parties the sense that they have had the best possible opportunity to fully present their positions to the judge. For example, assume the litigation has involved a significant number of depositions, significant paper discovery, and motions. A summary judgment motion has been filed which, if granted, will result in dismissal of the case. Under these circumstances, and if the court would ordinarily grant oral argument in such a case, it may be prudent to have an in-person argument, if only to assure the parties that they have been heard. A competing consideration is whether a virtual hearing will permit more economical participation by clients.
- (f) The costs (direct and indirect) of a virtual versus in-person proceeding, which may be substantial and impact one party more significantly than the other. There are costs attendant to both in-person and virtual proceedings. In-person proceedings may involve travel expense for the parties, witnesses, and/or counsel. Many times, economic or health issues mean that parties are unable to travel to attend in-person hearings. In such cases, remote video (even if accessed after the fact by parties who did not need to participate in the hearing) will aid the parties in understanding how their case is proceeding through the court system. On the other hand, virtual proceedings require an investment in reliable technology that functions in a court proceeding, as well as stable internet access that may be beyond the reach of a *pro se* litigant. In such a case, proper administration of justice may require the court to accommodate that litigant.<sup>6</sup>
- (g) The public interest in the proceeding. Historically, court proceedings have been open to the public and the media. Virtual hearings that do not have simultaneous transmission to the internet (or the less preferred but still beneficial prompt posting of a video and audio file of the proceedings) on an easily accessible internet platform such as YouTube not only deprive the public and press of access to hearing the proceedings in open court but

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<sup>6</sup> The loss of connectivity between the court and the other hearing participants, or one of multiple participants, is a common complaint of lawyers. This issue is exacerbated in rural areas that lack high-end internet access. Until reliable high-speed internet access reaches all inhabited areas of both countries, judges and lawyers will be required to consider the availability of internet access as a factor in determining whether a hearing should be held virtually.

may create mistrust of the judicial system. This may occur particularly in cases where the factual and legal issues involved raise social, economic or political issues impacting non-parties to the litigation, concern government agencies or officials, or have had significant media attention. On the other hand, virtual hearings (and in-person proceedings) that are streamed to the internet may actually increase public viewing of the court proceedings – it is easier to view proceedings of public interest from the comfort of one’s living room or office break room than it is to travel to the local courthouse during the workday. The weight to be assigned to this factor depends on the issues involved and the ability of the court to provide the public with access to the proceedings via the internet.

- (h) *Pro se* litigants. The inability of a *pro se* litigant to participate in a virtual hearing, either because of lack of internet access, lack of equipment, or lack of training, is an important factor that may dictate holding an in-person hearing. On the other hand, if the *pro se* litigant’s adversary needs a prompt hearing that cannot be held in person, the court can work with the parties to determine if there are technological resources available in other settings (the courthouse, a public library, etc.) that will give the *pro se* litigant access to the technology needed to conduct the hearing.
- (i) Public health issues. The state of the pandemic in the locale may be such that although an in-person hearing would, other things being equal, be preferable, it is not safe to conduct one. To the extent that the public health concern will continue, the need to advance and resolve the case may outweigh the preference for an in-person hearing.
- (j) Counsel’s rejection of technology. The College applauds the many judges and lawyers across our countries who have worked to embrace technology when the public health crisis demanded it. Change is difficult, but judges, lawyers, and their staffs recognized that civil proceedings needed to be advanced despite the inability or challenges of doing so in-person. As our survey demonstrates, the majority of those engaged in virtual pretrial proceedings were satisfied or very satisfied with the proceedings and overwhelmingly thought the use of virtual technology did not negatively affect the outcome of the proceeding.

That said, there are still lawyers who, despite ready access to broadband technology, are averse to using it for pretrial proceedings. The College encourages all lawyers to educate themselves about remote video technology and how it has the potential to improve access to justice, and to seek out formal studies and anecdotal evidence of the pros and cons of its use. Increased knowledge, and actual use of the technology, will increase one’s comfort with it. The modern trial lawyer’s duty to engage with other litigants and courts will include, if it does not already, the willingness and ability to engage virtually in pretrial matters. Thus, an objection to virtual pretrial

proceedings by counsel solely because he or she is not comfortable using readily available technology is a factor that should bear little weight in determining whether a given pretrial proceeding should be held virtually or in person and, we predict, no weight in the coming months and years.

The question remains about the process by which the mode of hearing (virtual or in-person) will be determined. Given the differences in the way pretrial matters are set for hearing and the availability of technology in the various jurisdictions, there is no “one size fits all” method of doing so. A local, state or province-wide rule could be adopted to provide that certain pretrial proceedings are, absent a court order to the contrary, regularly held via remote video and regularly conducted in-person. What should be generally avoided is uncertainty and repeat motion practice to determine how any particular type of motion should be heard, recognizing that there may be appropriate circumstances where the same type of proceedings requires different treatment.

One last point must be made. Legitimate concern has been raised over whether conducting proceedings virtually erodes proper respect for the judicial system and the rule of law. Most courtroom proceedings are designed to promote respect for the judiciary and the rule of law and for a lay person (and even a lawyer) “going to court” via remote video from his or her kitchen does not have the same “feel,” or engender the same degree of respect, as a live proceeding.

The atmosphere created during virtual proceedings can be enhanced by appropriate lighting, background, and audio from the court. It can also be enhanced by adopting rules for the participants, lawyers and laypersons to approach the virtual proceedings as they would in-person proceedings; *i.e.*, that they dress and act as if they were physically present in court.<sup>7</sup> Appropriate notice of this requirement needs timely communication to all participants.

7. “Small Claims” Court Proceedings. Called by different names in the different states and provinces, millions of “small” cases are filed and (usually) quickly resolved every year. These cases address landlord-tenant disputes, bill collection, disagreements between neighbors, minor traffic infractions, and the like. Although the dollars involved are relatively small, the issues are very important – indeed, sometimes life-changing – for those involved. These proceedings also have a significant number of *pro se* litigants.

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<sup>7</sup> For example, the Conference of State Court Administrators have adopted “Virtual Courtroom Standards and Guidelines” (adopted from the work of the Michigan Trial Courts’ State Court Administrative Office) that addresses virtual courtroom decorum, appropriate virtual backgrounds, and much, much more. It may be accessed here: [https://www.ncsc.org/\\_data/assets/pdf\\_file/0016/40363/RRT-Technology-Guidance-on-Remote-Hearings.pdf](https://www.ncsc.org/_data/assets/pdf_file/0016/40363/RRT-Technology-Guidance-on-Remote-Hearings.pdf).

8. Some small claims courts have been at the forefront in the use of remote video in these types of matters during the pandemic, and continued experimentation with virtual proceedings here is urged. Virtual proceedings present a method of resolving these claims by reducing costs for all participants and reaching a faster resolution, while giving the parties their “day in court.”
9. Oral Arguments on Appeal. Many of the appellate courts in both countries conducted virtual oral arguments during the pandemic. The American Academy of Appellate Lawyers has announced a preference for in-person oral arguments but has created “Recommendations for Courts Hearing Oral Argument Remotely.”<sup>8</sup> As stated in our “Overarching Principles Applicable to Civil Trials, “[i]n-person oral arguments by counsel on appeal should be generally permitted and are preferred.”

The use of remote video for appellate arguments after public health issues subside should continue to be studied. No doubt, remote video reduces travel and other expenses for the parties and, when the video is either live-streamed or promptly uploaded to the internet, gives the public the opportunity to see how our courts function. The College believes that respect for the judiciary and the rule of law is enhanced when the public has the opportunity to see and hear the workings of the court, even if only via video.

## Conclusion

Adjustments to court proceedings to address public health safety concerns have demonstrated that some types of virtual proceedings can work effectively and actually can enhance access to the civil justice system in many instances. They should continue to be used, under the circumstances addressed in this paper, even after public health concerns do not require their use.

Experiments with those uses of remote video technology not endorsed at this time should continue with the consent of the parties, with a process in place to gather information for later evaluation of their efficacy. Ideally, a uniform method of collecting data from such proceedings can be developed, so that we can make informed judgments about increased use of remote video technology in the administration of justice.

The new use of technology in court proceedings requires that care be taken not to ignore the fact that many litigants, including *pro se* litigants, lack access to and the ability to use such technology or that one *pro se* litigant may have a technological advantage over another. Transparency likewise is essential. Participants in such proceedings must be able to easily, quickly, and accurately determine how the proceedings will be handled. Local orders, rules, and guidelines should be readily available to all.

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8 The recommendations may be accessed here: <https://www.appellateacademy.org/publications/AAAL-Remote-Task%20ForceCourt-Recs.pdf>.

Finally, and quite importantly, great care must be taken so that respect for the court and the judicial process is assured for such proceedings, such that all will believe the parties will have their proper day in court. Lawyers and judges need to do our part to strive to achieve this respect by all.

Advocacy in the 21st Century Committee  
Survey Data Analysis

APPENDIX

# Advocacy in the 21<sup>st</sup> Century Committee – Survey Data Analysis

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Raw Survey Data

## Introduction

As the Covid-19 pandemic began to take hold across North America, courtrooms closed, in-person hearings became a rarity, and legal proceedings using remote video technology became the norm in most jurisdictions. During this period, the Advocacy in the 21<sup>st</sup> Century Committee (A21C) examined the use of remote video technology in court hearings, and gathered rules, case law and scholarly articles on the topic as those resources emerged in the United States and Canada.

The Committee published eight papers of principles and guidance on the use of remote video technology to assist Fellows in using the technology to participate in remote legal proceedings. As a further step, A21C developed a survey to gauge Fellows' personal experience with, and their resultant opinions of, remote video technology for litigation proceedings, to help inform the present paper on the future of remote video court hearings after the pandemic. The College sent emails linking the survey, on the Survey Monkey platform, to just over 5,000 Fellows in December 2021. The graphic charts showing the survey results, by question, are attached as [Annex 1](#).

This analysis of the survey results is part of A21C's paper, whose purpose is to recommend a position for the College on the future use of remote video in court proceedings. The survey results, by themselves, were not intended to be, nor are they, the main basis for the paper's recommendations. The survey and its results were proposed to provide additional information, coupled with information A21C gathered elsewhere and from personal experience, upon which appropriate judgments, principles and recommendations could be formed. Although both civil and criminal practitioners completed the survey, A21C decided to limit this paper to principles and recommendations for civil proceedings only, and this analysis follows suit.

The survey comprised 47 questions, apart from the opportunity for participants to provide full written comments provided, here, in [Annex 3](#). Following the first two general questions related to age and main office location, [Q.3](#) asked survey respondents to identify their primary area of practice as either criminal or civil. Of the 461 survey participants, 373 indicated that they practice mainly civil law and 88 indicated that they practice mainly criminal law. Based on the response to [Q.3](#), the survey presented each participant with a set of either 20 or 21 questions that pertained only to their primary area of practice. This analysis presents the survey results and charts for the initial general questions, the set of civil questions ([Q.5](#) to [Q.25](#)) and the full written comments of civil practitioners.

The survey was completed by 461 Fellows, yielding a response rate of 9%. The survey asked respondents to identify their experience with and participation in various proceedings using remote video technology, including the response option "none". However, it is possible that Fellows who never participated in any remote video hearings chose not to take the survey at all, leading to the smaller response rate.

Respondents could choose not to answer any question, after answering [Q.3](#). When a respondent did not answer a question, the survey recorded that the respondent had "skipped" the question. However, the number of skipped responses to each question in the civil set includes the number of respondents who did not receive the question, because they only questions in the criminal set, and vice versa. Consequently, the results for each question, consistently showing a large number of "skipped" responses can appear misleading at first glance. It is difficult to gauge why respondents

actually did skip some questions posed within their area of practice, since the response choices included “I have not participated in this type of proceeding”, “not applicable”, or “other”.

**Question 3** asked the respondent’s age bracket. That question’s results show 40% of respondents are 70 years or older, with close to 7% of that number being 80 years or older. The survey did not ask respondents whether they were in active practice, semi-retired or retired. The age data may have had an important effect on the results for other questions, e.g., difficulties in using the technology (Q.21). A more sophisticated analysis is needed to find any correlation between the two sets of data. However, a rudimentary examination of the responses from Fellows who are 70 or older show that they were much more likely than other age brackets to indicate no involvement with remote video technology in any proceeding listed in Q.6. By contrast, every responder between the ages of 40 – 59 indicated that they had been involved with at least one type of proceeding listed, using remote video technology.

The response rates by jurisdiction (Q.2) present some anomalies. The number of responses from each U.S. state is not proportionate to the number of Fellows in each state. The survey results do not correlate the proportion of Fellows in each jurisdiction with each jurisdiction’s proportion of responses; however, California, with 482 Fellows, yielded 41 or 9.15% of the survey responses, while Texas, with 269 Fellows yielded 13 or only 2.9% of the responses, establishing that the overall survey results do not represent all jurisdictions proportionately.

Apart from federal courts’ policies and rules in the U.S. and Canada, each state, province or territory determined its own policy on remote video hearings and the scope for using that technology in various court proceedings. The A21C’s previous work showed that policies and use varied from jurisdiction to jurisdiction. The resulting experience of Fellows from different states, provinces or territories would differ; however, the data provided did not correlate experience and jurisdiction.

## **Survey Data – General**

Civil practitioners were asked to identify their primary practice areas, the response being limited to two of 14 areas (Q.5). Among the list of specific subject areas, the largest proportion of respondents listed “commercial litigation” (47.5%), followed by “personal injury – defense” (19%), “medical malpractice – defense” (18%), “personal injury – plaintiffs” (15%) and “products liability – plaintiffs” (13%). Areas not specified, represented by “other”, comprised 21.5% of responses. The data suggests that 65% of respondents have a primary practice of proceedings (and jury trials in the U.S.) that likely involve significant examination of live lay witnesses and experts, and sophisticated demonstrative evidence.

**Question 6** shows that only 8% of the respondents (and, perhaps, the 3% (10) who skipped the question) were never involved in any remote video court proceedings. Applying some general assumptions, the numbers of lawyers involved in remote video proceedings diminished with the increased complexity of the proceedings. (We also know that experience with video proceedings diminished with age.) Over 81% of respondents had participated in remote video case management conferences, while less than 10% had participated in remote video jury trials.

## Quality of Remote Video Technology Proceedings

Questions 7 to 15 asked the respondents' opinions on the overall quality of each type of proceeding listed in Q.6 in which they had been involved. Similar to Q.6, respondents believed that the quality of the proceeding became less satisfactory as the complexity of the proceeding increased. The quality was "excellent" for 27%, and "poor" for no one, in remote video case management conferences. The largest number of responses moved from "excellent" quality to "very good" and "good" for both complicated discovery motions and dispositive motions. "Fair" and "poor" response percentages increased for fully or partially remote non-jury trials (Qs. 11 and 12). "Fair" and "poor," together, comprised 40% of the responses from those who had been involved in jury trials that used *some* remote technology (Q.13).

Not surprisingly, 77% of respondents who had been involved in remote video appellate arguments (Q. 15) indicated that the quality of the proceedings was "good," "very good" or "excellent." Here, too, the straightforward nature of the proceedings, without witnesses or evidence, yielded a better opinion on the quality of proceedings than for trials.

Gleaning conclusions from the questions about overall quality of the remote video proceedings is complicated by the diminishing number of lawyers who have been involved in each increasingly complex proceeding, as stated earlier. Ninety-five per cent of respondents indicated that they "have not participated in this type of proceeding" in respect of *fully* remote jury trials (Q. 14), leaving only 15 "experienced" responders opining on the quality of those proceedings.

One question (Q.22) addressed the mandatory mediation process. While one third said the question did not apply to them, 50% said the quality of remote video mediation was "good," "very good" or "excellent," while 16% said it was "fair" or "poor."

## Access to Justice, Outcomes, and Confidence in the Justice System

Questions 16 to 19 delved into overarching principles concerning satisfaction that remote hearings meet the overarching imperatives of the justice system. Sixty-eight percent of respondents were "very satisfied" or "satisfied" that the use of remote video technology in court proceedings provides parties with access to justice, that is, access to the courts with minimal barriers (Q.16). When asked if the outcome for the respondent's client was negatively affected by the use of remote video technology in each proceeding type listed earlier, the hearing's complexity or the seriousness of its consequences appear as determining factors in the responses and their level of certainty. Response choices for this question (Q.17) included "unsure".

For case management conferences and simple motions, 95% and 85%, respectively, said remote video did not negatively affect the outcome for their client. For jury trials, only 41% responded that their client's outcome had not been affected negatively by the remote video proceeding, but 51% were "unsure" if the outcome had been affected negatively. The results for hearings on dispositive motions and discovery disputes fell between those numbers, and certainty waned (i.e., the number of "unsure" responses increased) with the complexity or seriousness of outcome.

Slightly more than half of respondents were "very satisfied" or "satisfied" that using remote video technology for court proceedings promotes public trust and confidence in the courts; however, one-third were "unsure" that was the case (Q.18). Respondents were more certain but less satisfied that remote video proceedings promoted traditional dignity and seriousness in those proceedings, when

compared to in-person hearings (Q.19). Thirty percent of respondents were not satisfied, while only 20% were uncertain about the technology's impact on the dignity and seriousness of the proceedings.

Two questions (Q. 23 and Q.24) sought a comparison of in-person non-jury and jury trials, respectively, with *entirely* remote technology non-jury trials and *entirely* remote jury trials, regarding a client's "access to justice." Most respondents (75%) have not tried an entirely remote technology non-jury trial. Of those that did, 52% believe remote and in-person non-jury trials are the same, 43% believe remote non-jury trials are worse, and very few (2%) believe remote technology trials are better than in-person trials. When the same questions were asked in respect of an entirely remote technology jury trial (Q. 24), of 23 respondents who had tried an entirely remote jury trial, three quarter believe remote trials are worse and one quarter believe they are better, in terms of their client's "access to justice."

### **Technology Issues**

The survey tried to gauge the difficulties that Fellows experienced when using remote proceedings (Q.21). "Connectivity" was the overwhelming issue for respondents (80%), with "audio" and "video software" being the next most frequent difficulties (70% and 44%, respectively).

### **The Future**

Question 20 was the pivotal question arising from two years of (compelled) pandemic remote video court proceedings. It asked whether the court system should continue to incorporate the use of remote technology in the proceedings listed earlier, after the end of the pandemic. As before, the complexity of the proceeding or the seriousness of the outcome's consequences are closely correlated with the responses and the respondents' certainty on the issue. Case management conferences received a 95% positive response, with less than 1% of respondents being unsure. Depositions were added to the list and garnered an 84% positive response, with very few respondents unsure (2.52%). Jury trials were at the polar opposite of the spectrum, with 84.5% of respondents indicating that jury trials should not continue to incorporate remote video technology, while 9% were unsure.

### **Written Comments**

All respondents had the opportunity to provide full written comments on any aspects of their experience with remote video proceedings. The full comments are attached as [Annex 3](#).

Numerous commenters appeared resigned to prospect that remote video proceedings are here to stay, even if they don't favour them. If that is accurate, they say the goal should be to improve remote video proceedings. A number of commenters viewed remote video proceedings as having both positive and negative aspects ("a blessing and a curse"). Several Fellows believe that remote video proceedings are a positive development in the justice system, seeing them as: efficient, saving travel time and money, promoting justice and public confidence in the courts, and opening possibilities to offer evidence (that is not otherwise available) from anywhere in the world.

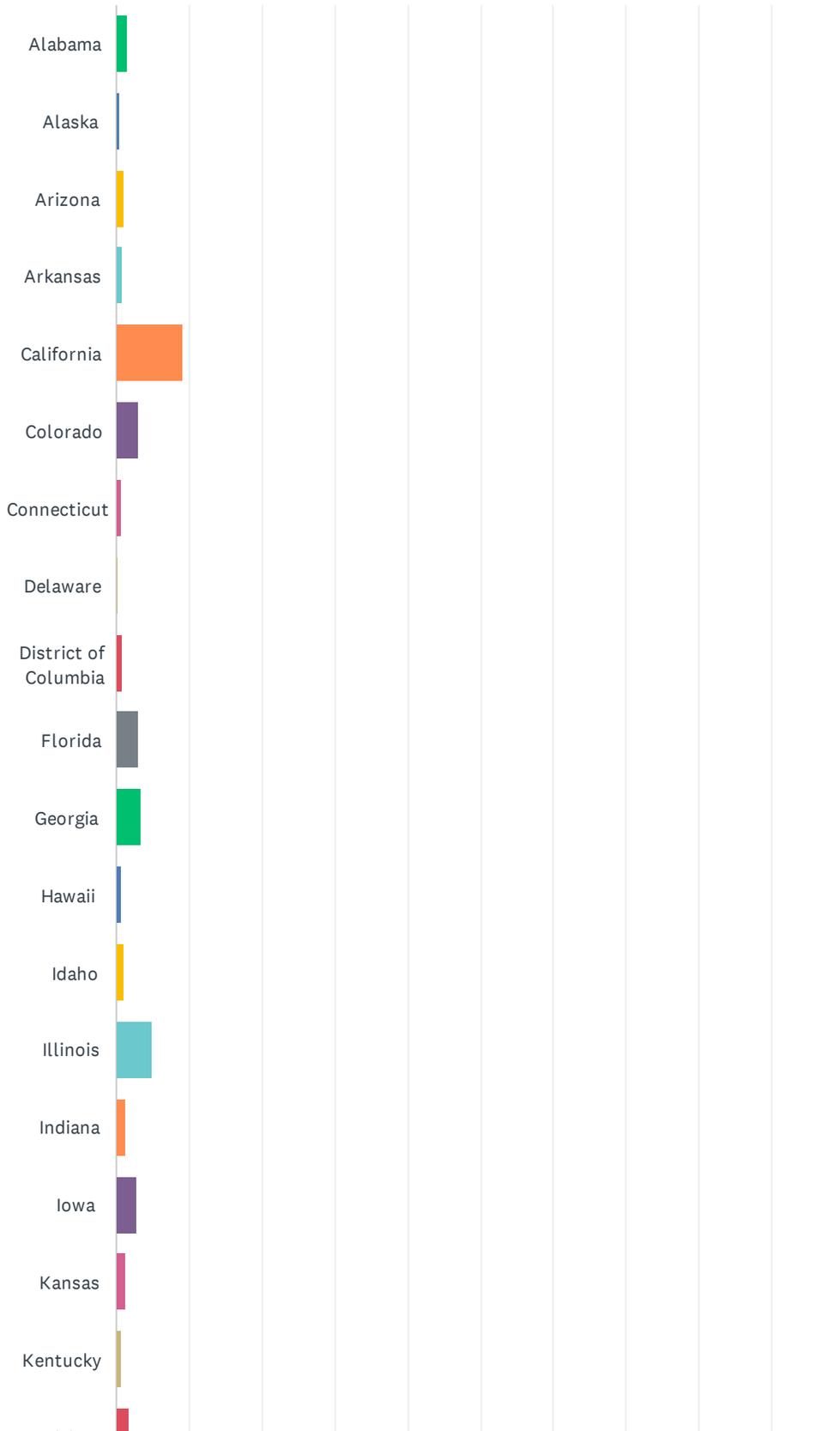
Many comments echoed the survey findings, favouring remote video proceedings for routine, interlocutory and less contentious proceedings in the litigation process. However, even those who view remote video proceedings positively still cling to a traditional belief in the power of in-person trials to ensure face-to-face confrontation, participant engagement, optimal cross-examinations, effective presentation in exhibit-laden cases, and a superior trial process in general. Many commenters believe a hybrid court system would be very satisfactory, with routine and administrative proceedings by video and complex cases in person. Others envisage hybrid cases, with non-controversial parts of a single case heard by video and complex aspects of the case heard in person.

## **Conclusion**

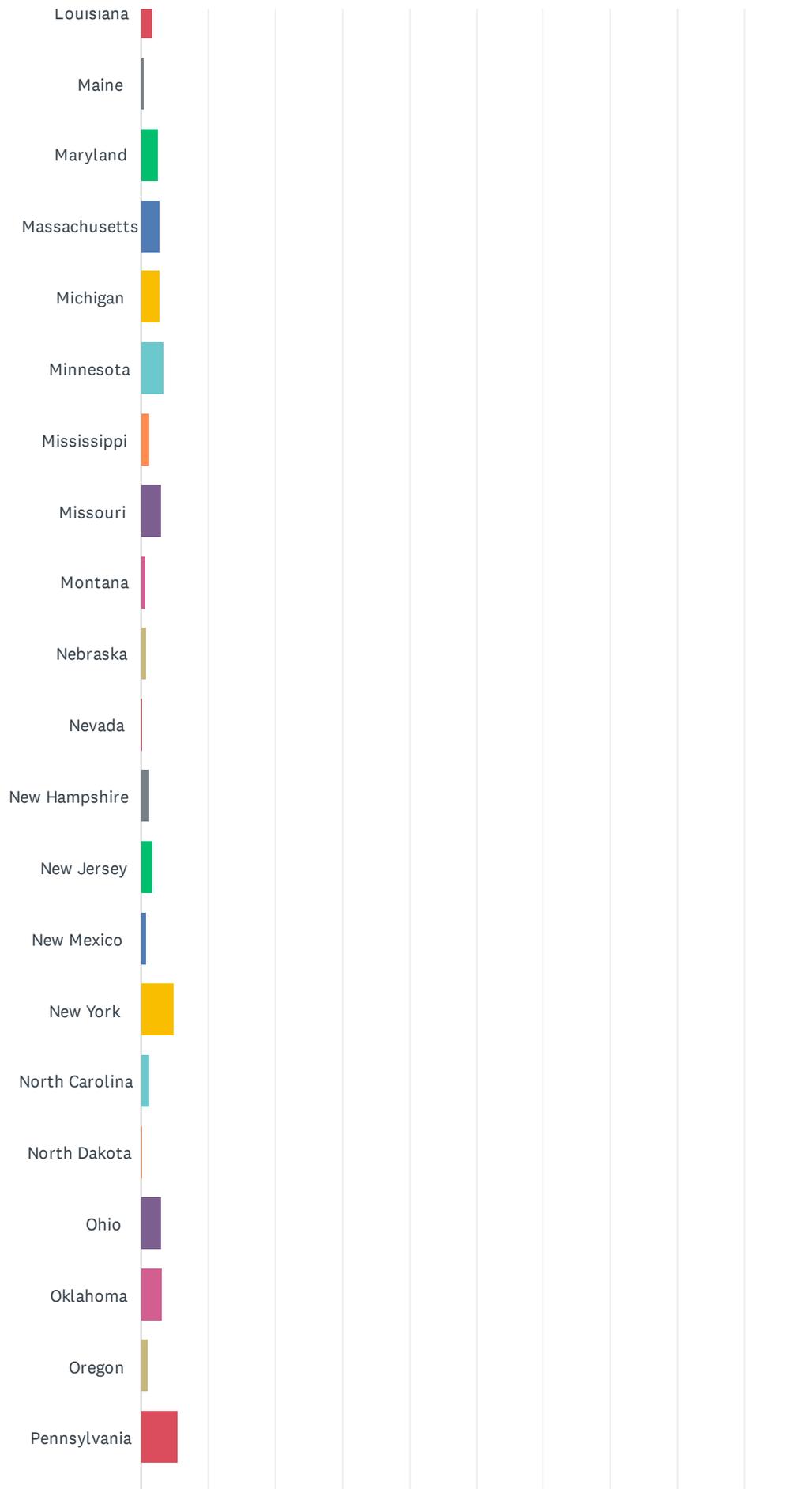
Although A21C hoped for a greater response rate, the survey was not intended to provide hard empirical evidence about Fellows' opinions on remote video technology for court proceedings. It was intended as another source of information about the trends in Fellows' thinking about the future of these proceedings, as we emerge from pandemic times. In this objective, the survey is successful and Fellows' trends in thinking about remote video proceedings are defined enough to be useful information for preliminary recommendations about the future of litigation. A21C intends to issue another questionnaire in the coming months with the goal of collecting additional data from Fellows that will lead to more firm recommendations.

## Q2 Select the State or Province of your main office.

Answered: 448 Skipped: 13



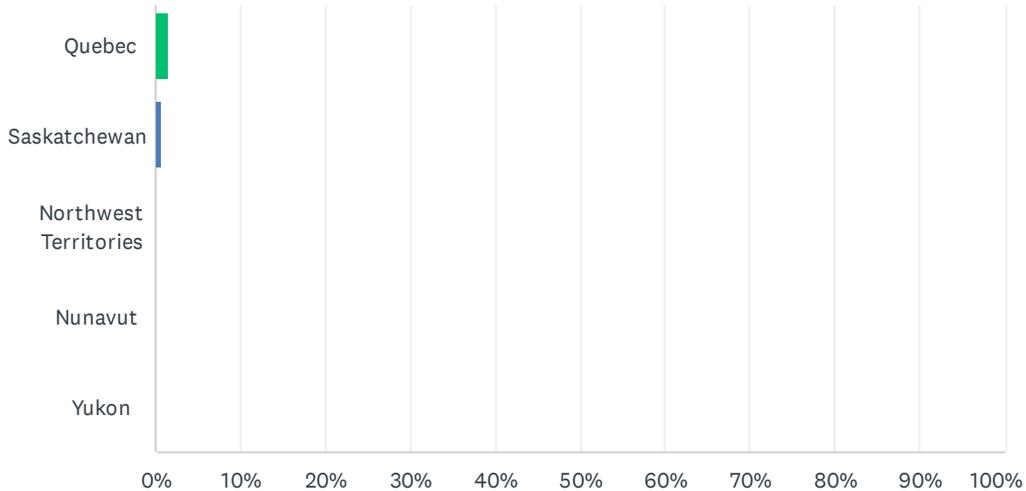
# Remote Proceedings - A21C Survey



# Remote Proceedings - A21C Survey



# Remote Proceedings - A21C Survey



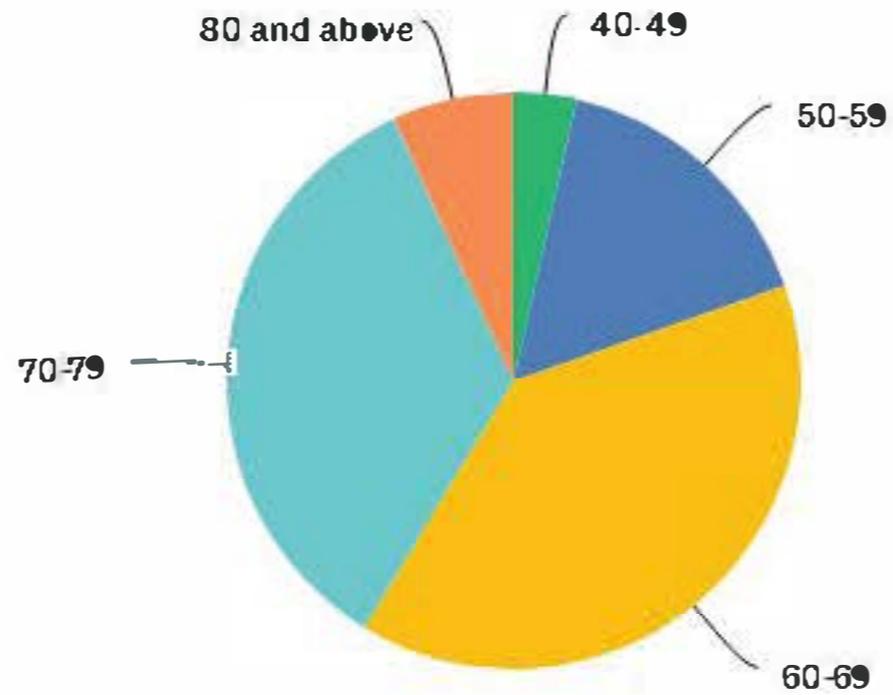
## Remote Proceedings - A21C Survey

ANSWER CHOICES	RESPONSES	
Alabama	1.56%	7
Alaska	0.45%	2
Arizona	1.12%	5
Arkansas	0.89%	4
California	9.15%	41
Colorado	2.90%	13
Connecticut	0.67%	3
Delaware	0.22%	1
District of Columbia	0.89%	4
Florida	2.90%	13
Georgia	3.35%	15
Hawaii	0.67%	3
Idaho	1.12%	5
Illinois	4.91%	22
Indiana	1.34%	6
Iowa	2.68%	12
Kansas	1.34%	6
Kentucky	0.67%	3
Louisiana	1.79%	8
Maine	0.45%	2
Maryland	2.46%	11
Massachusetts	2.68%	12
Michigan	2.68%	12
Minnesota	3.35%	15
Mississippi	1.34%	6
Missouri	2.90%	13
Montana	0.67%	3
Nebraska	0.89%	4
Nevada	0.22%	1
New Hampshire	1.34%	6
New Jersey	1.79%	8
New Mexico	0.89%	4

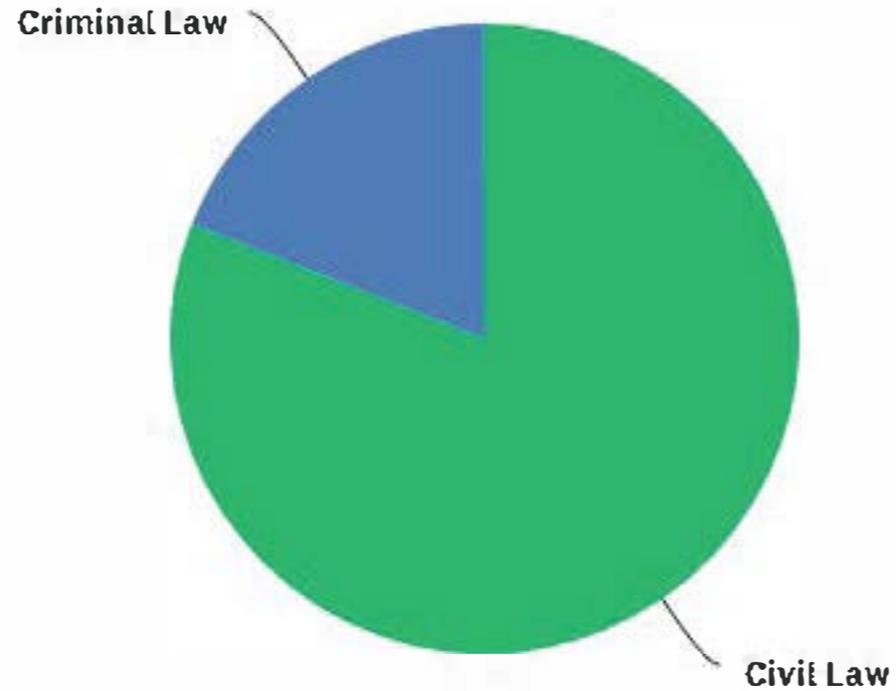
## Remote Proceedings - A21C Survey

New York	4.91%	22
North Carolina	1.34%	6
North Dakota	0.22%	1
Ohio	2.90%	13
Oklahoma	3.13%	14
Oregon	1.12%	5
Pennsylvania	5.58%	25
Puerto Rico	0.00%	0
Rhode Island	0.67%	3
South Carolina	1.34%	6
South Dakota	0.45%	2
Tennessee	1.12%	5
Texas	2.90%	13
Utah	0.67%	3
Vermont	0.45%	2
Virginia	1.79%	8
Washington	1.12%	5
West Virginia	0.45%	2
Wisconsin	0.67%	3
Wyoming	0.45%	2
Alberta	1.12%	5
British Columbia	0.67%	3
Manitoba	0.89%	4
New Brunswick	0.00%	0
Newfoundland and Labrador	0.22%	1
Nova Scotia	0.67%	3
Ontario	2.68%	12
Prince Edward Island	0.00%	0
Quebec	1.56%	7
Saskatchewan	0.67%	3
Northwest Territories	0.00%	0
Nunavut	0.00%	0
Yukon	0.00%	0
<b>TOTAL</b>		<b>448</b>

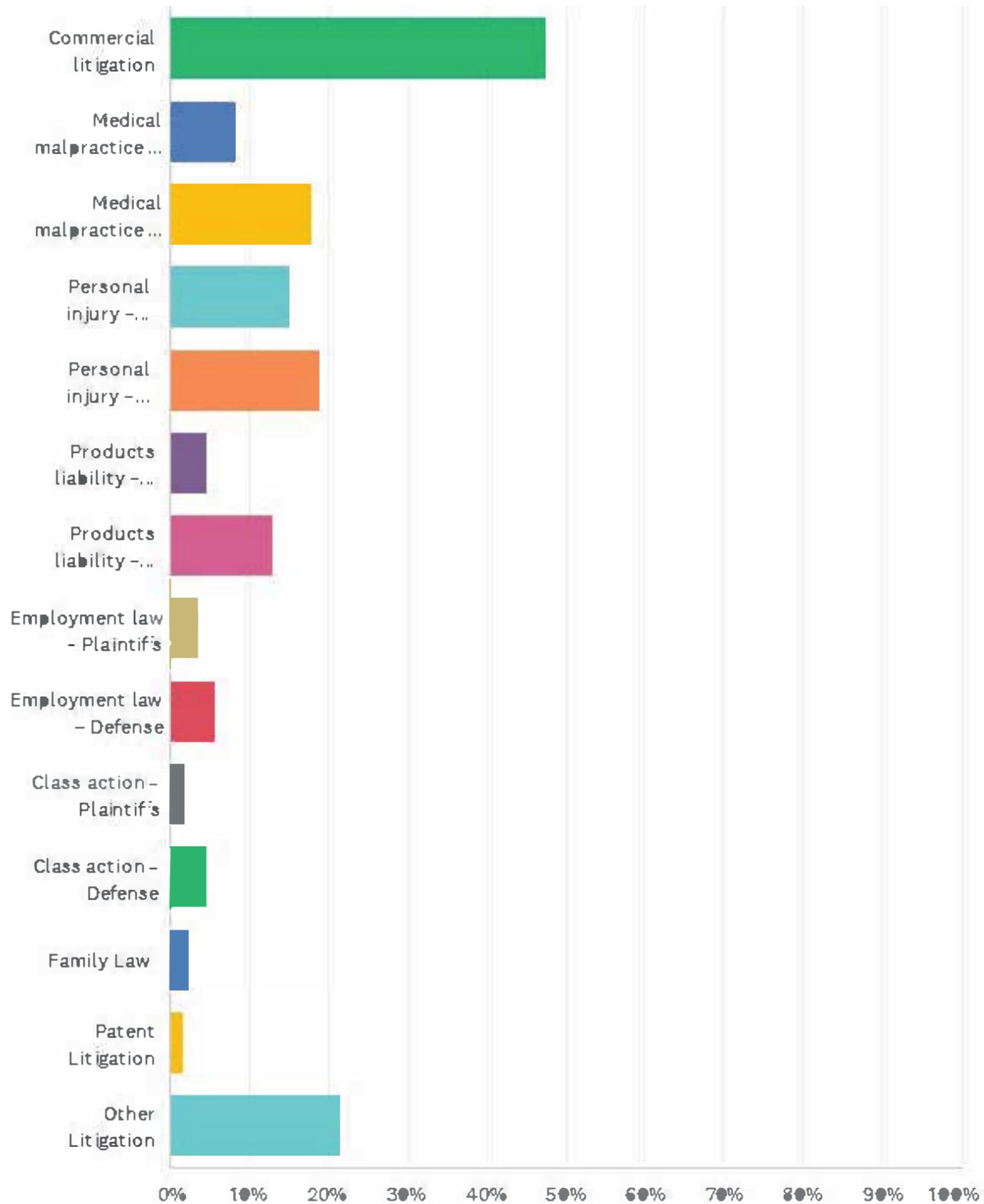
Q3 Please select your age range.



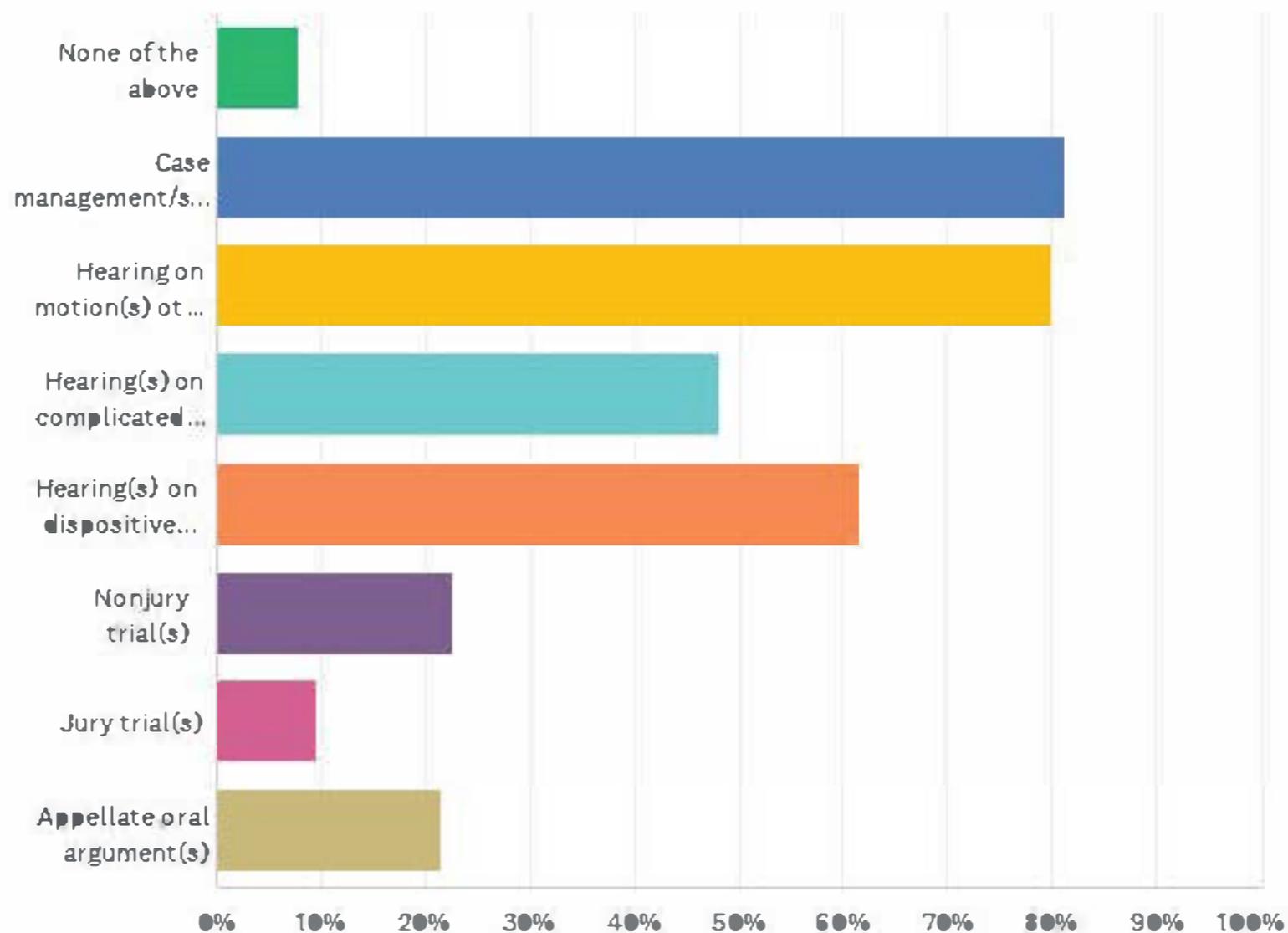
Q4 Which of the following represents your primary area of practice?



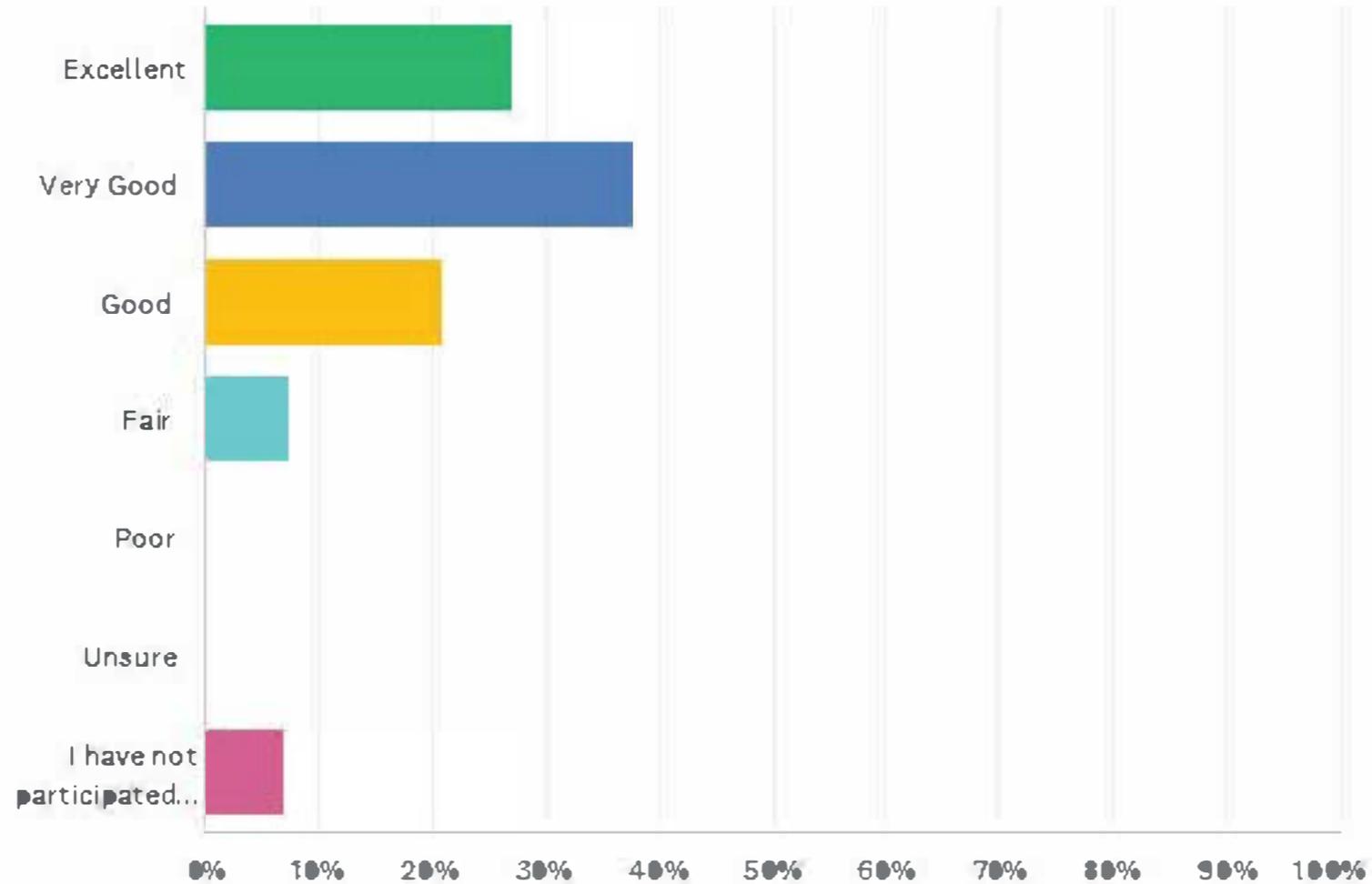
Q5 Which of the following represents your primary practice area(s) ? (check no more than two)



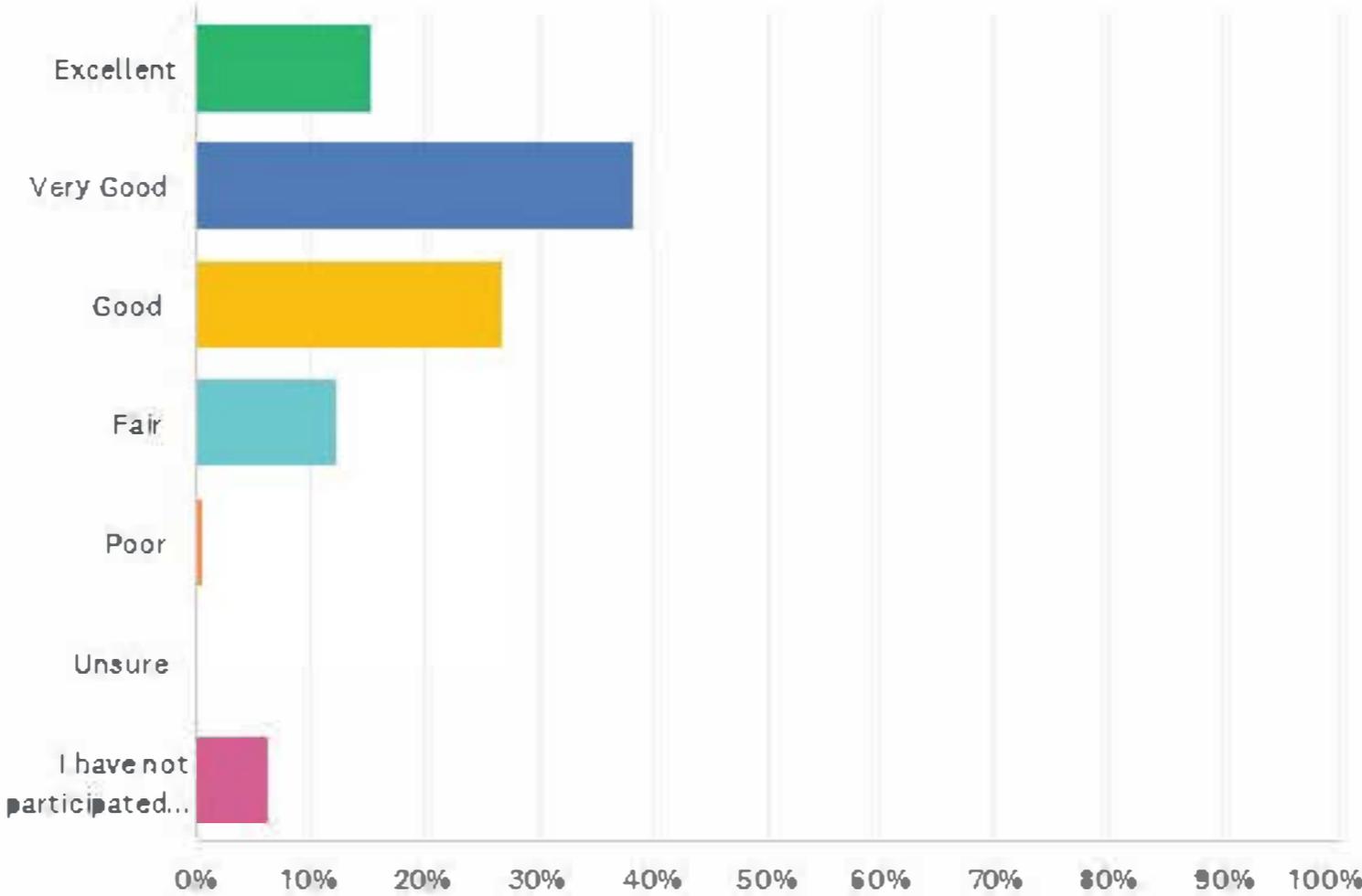
Q6 Which type(s) of court proceedings have you been involved with while using remote video technology? (Check each box that applies)



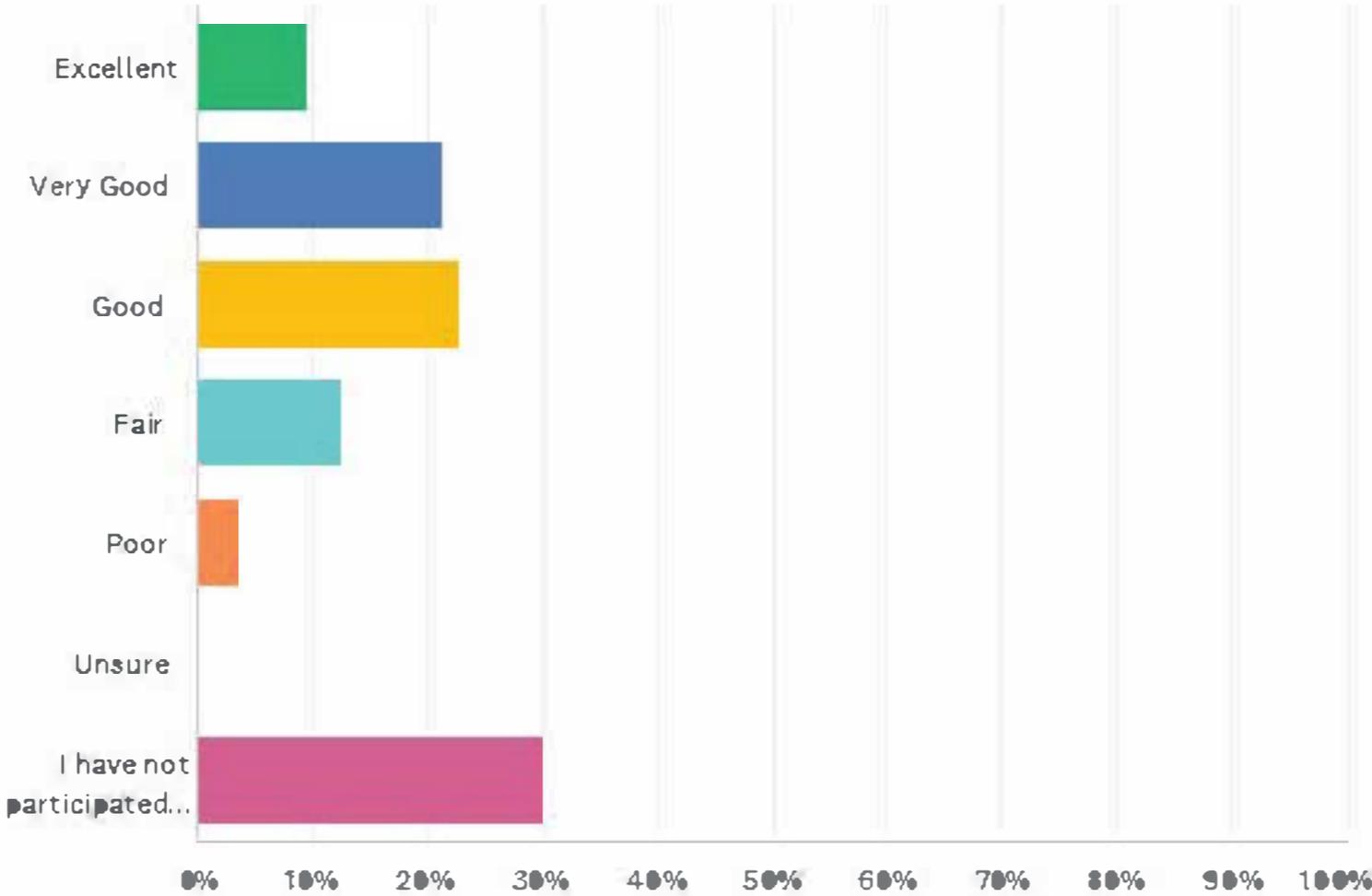
Q7 Indicate the overall quality of the case management/status conference(s) in which you have been involved that included the use of remote video technology.



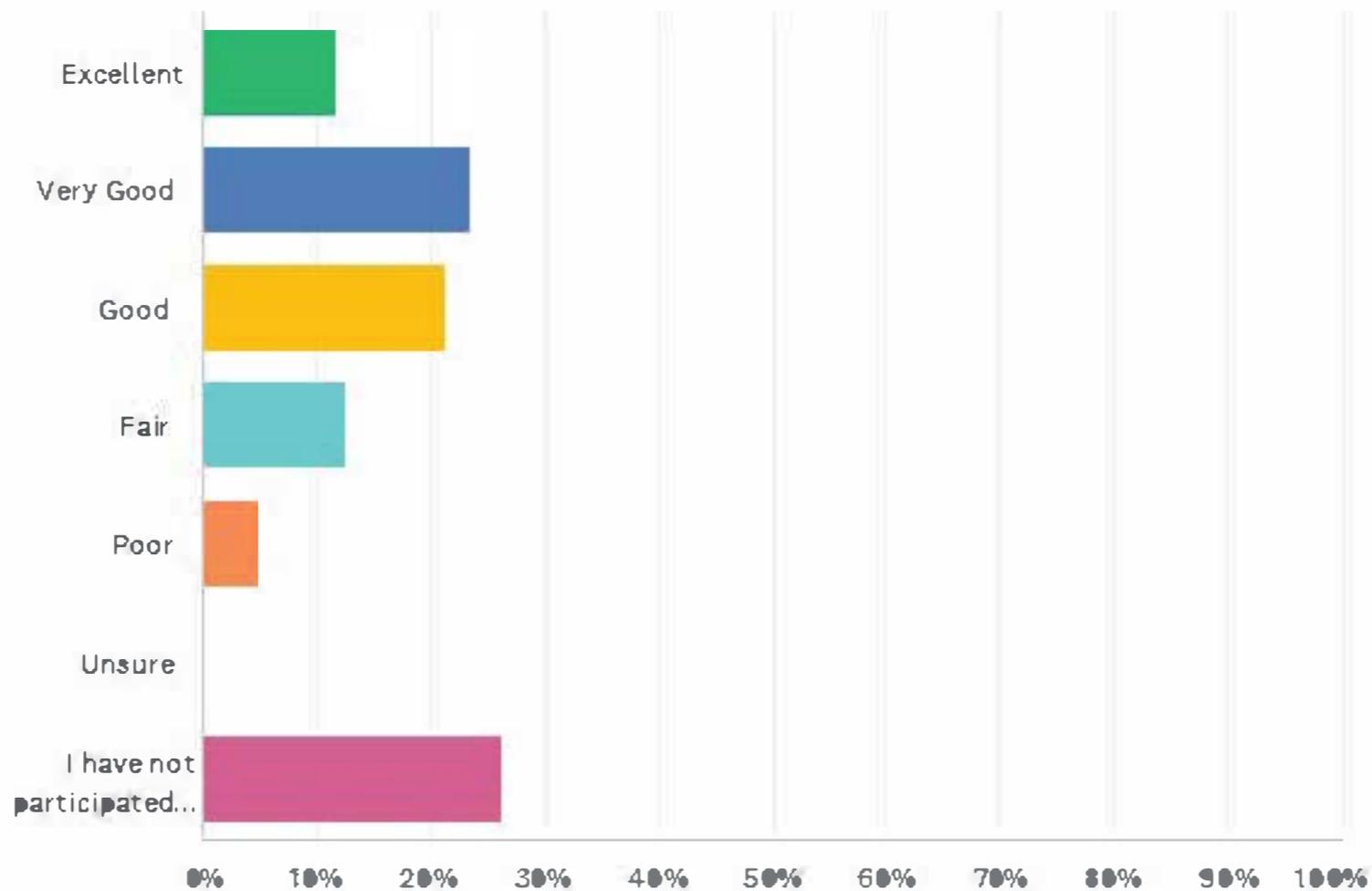
Q8 Indicate the overall quality of the hearing(s) on motion(s) other than dispositive motions and complicated discovery disputes in which you have been involved that included the use of remote video technology.



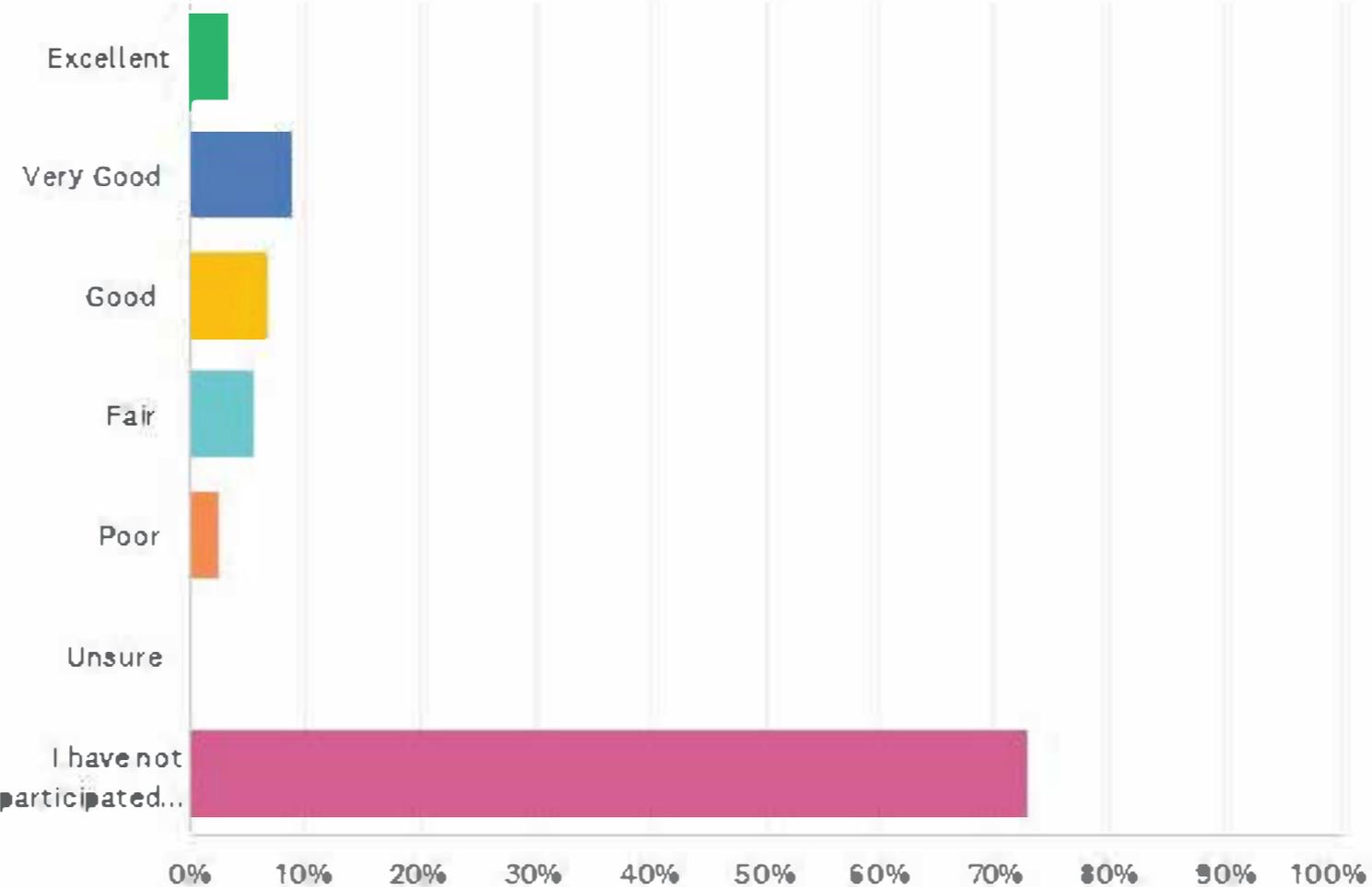
Q9 Indicate the overall quality of the hearing(s) on motion(s) on complicated discovery disputes in which you have been involved that included the use of remote video technology.



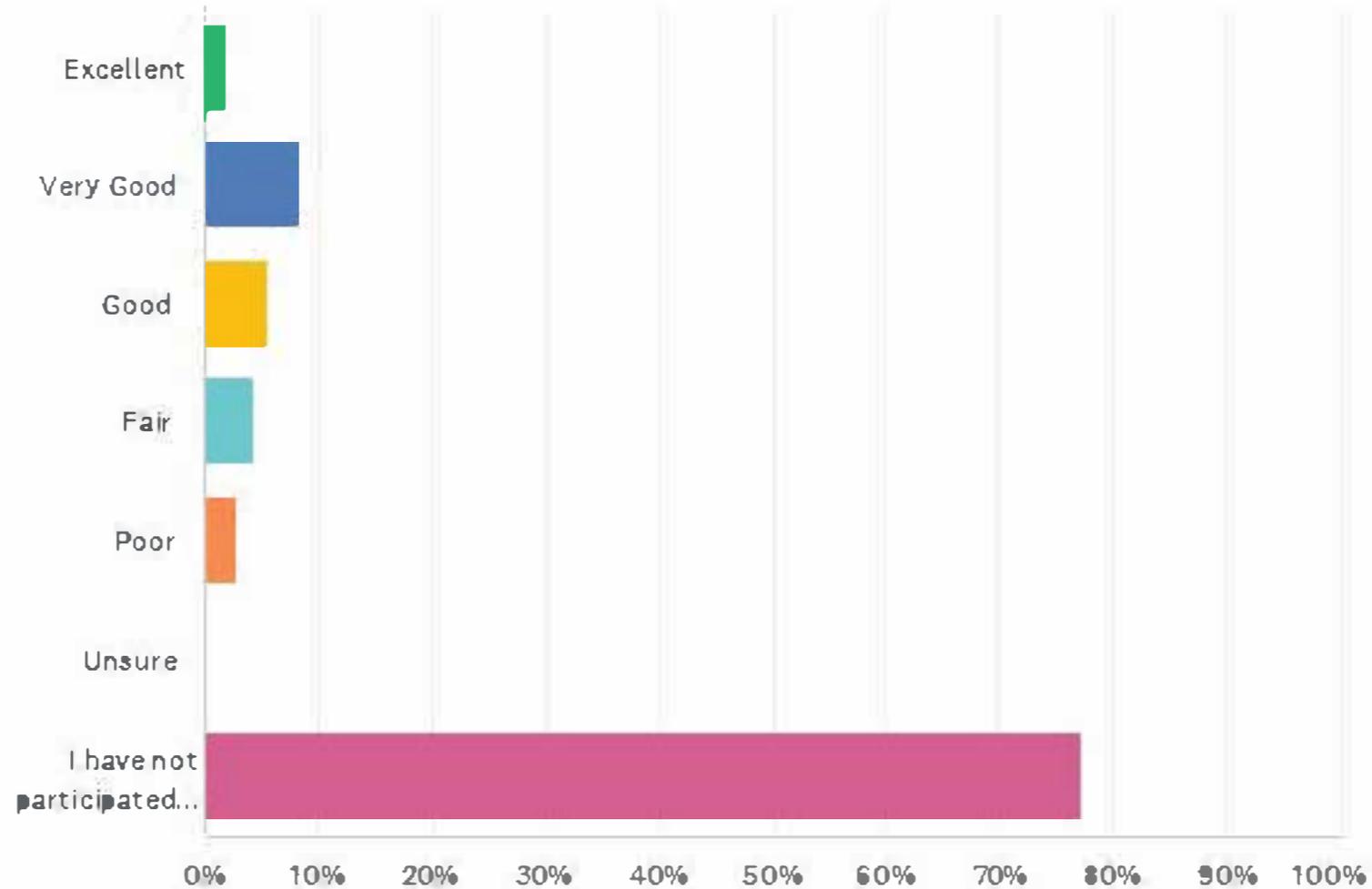
Q10 Indicate the overall quality of the hearing(s) on motion(s) on dispositive motions in which you have been involved that included the use of remote video technology.



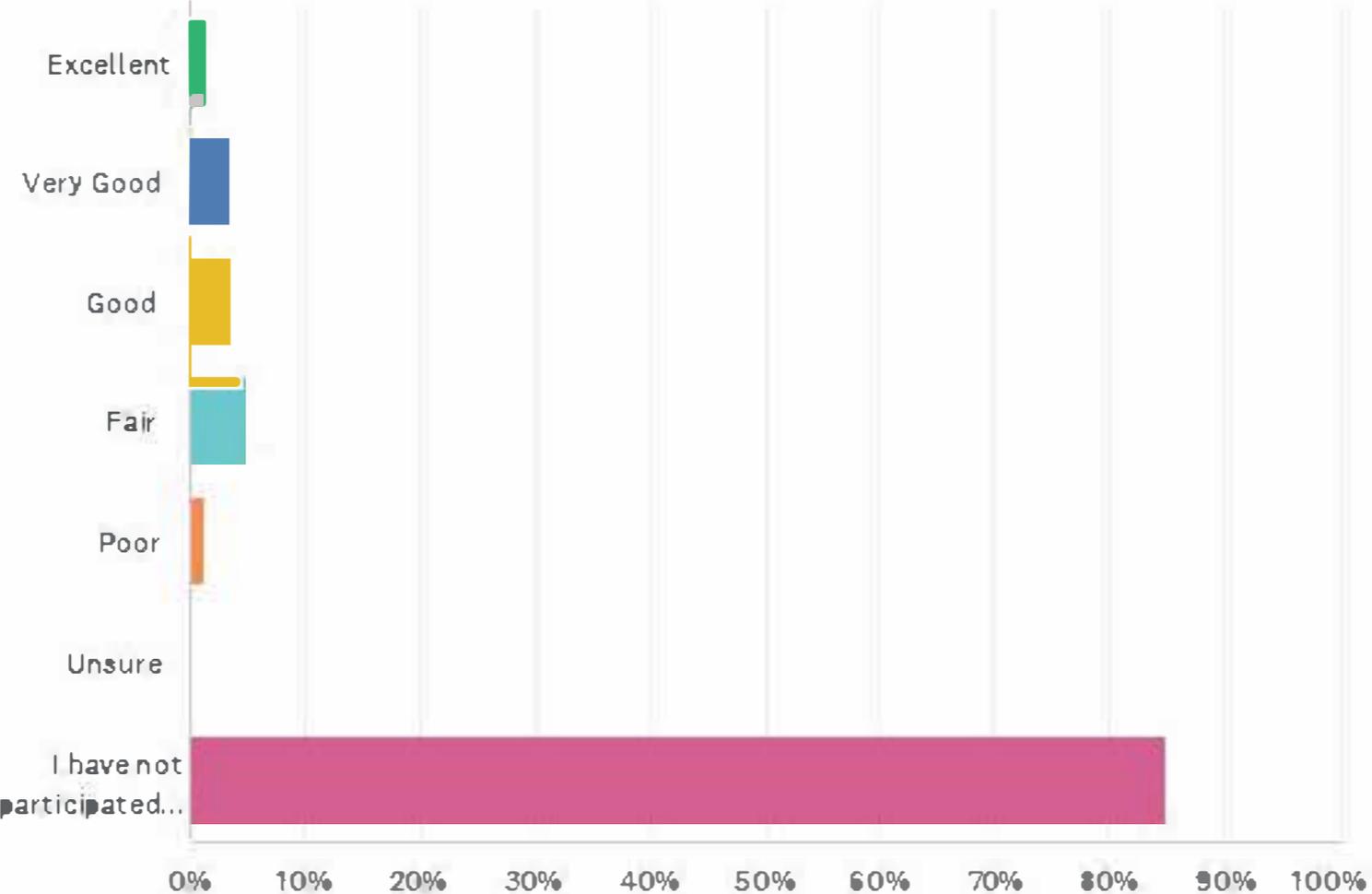
Q11 Indicate the overall quality of the nonjury trial(s) in which you have been involved that was conducted entirely through the use of remote video technology (a “fully remote” nonjury trial)..



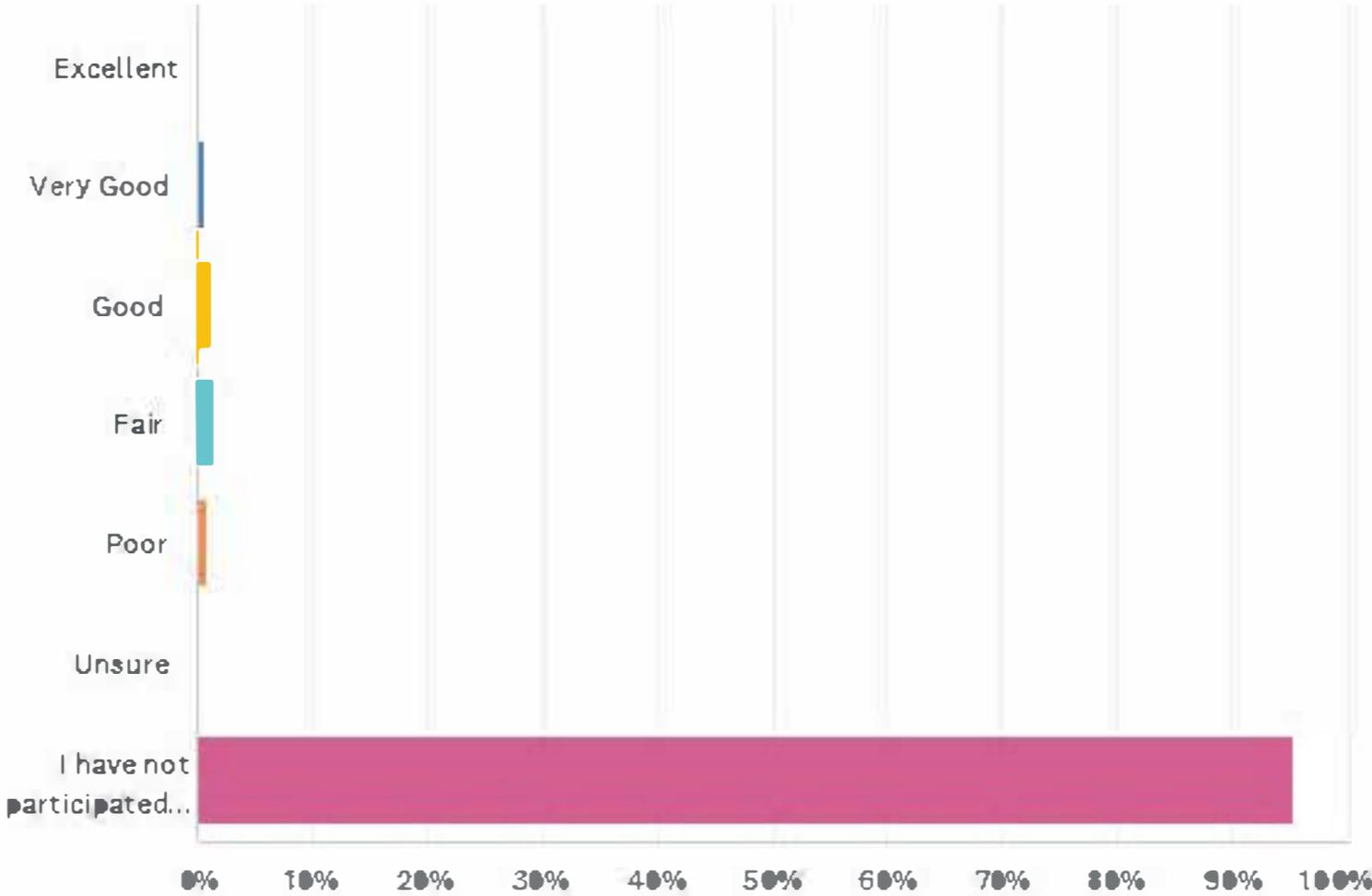
Q12 Indicate the overall quality of the nonjury trial(s) in which you have been involved that included the use of remote video technology by one or more (but not all) participants or witnesses.



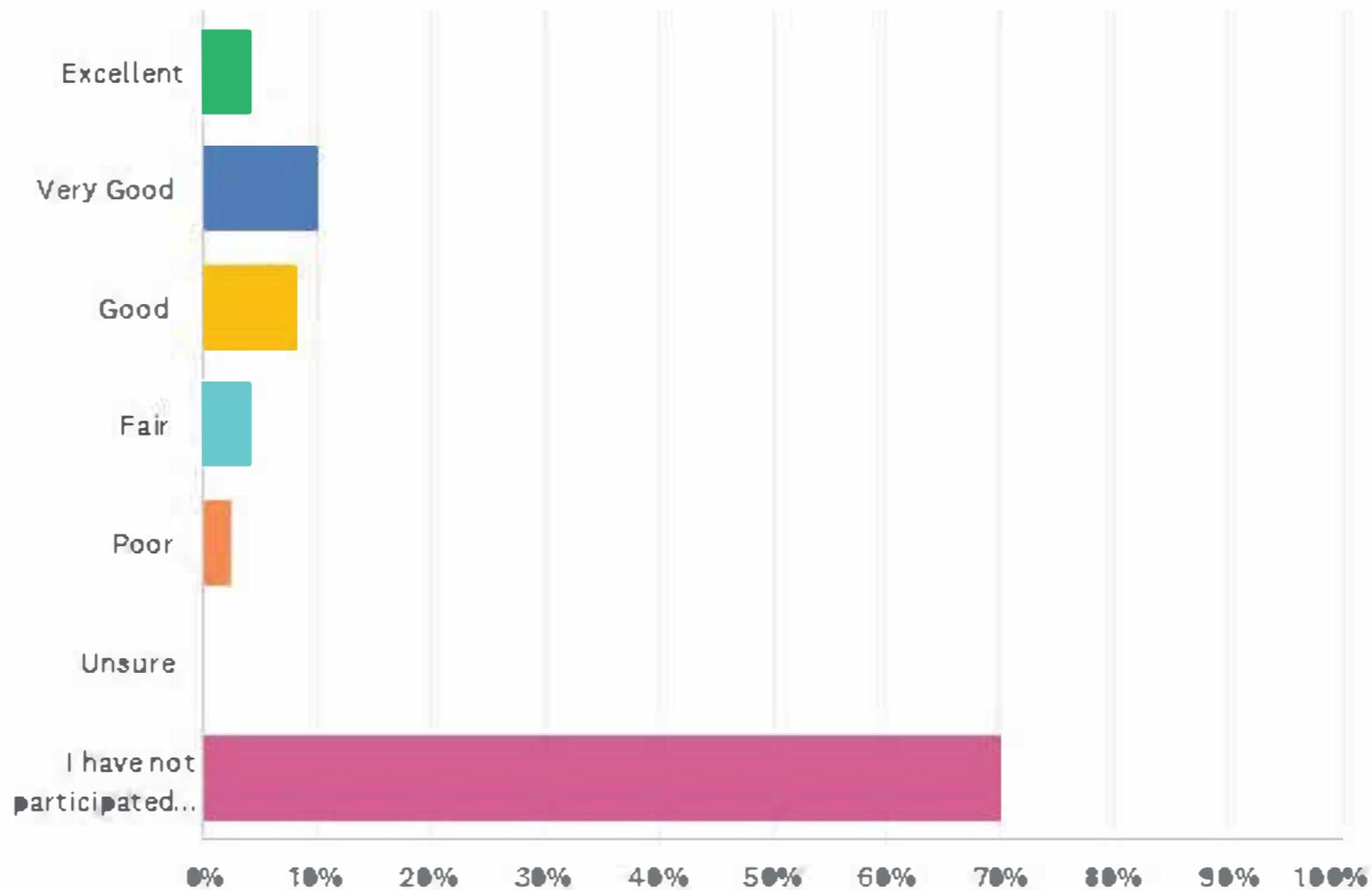
Q13 Indicate the overall quality of the jury trial(s) in which you have been involved that included the use of remote video technology by one or more (but not all) participants or witnesses



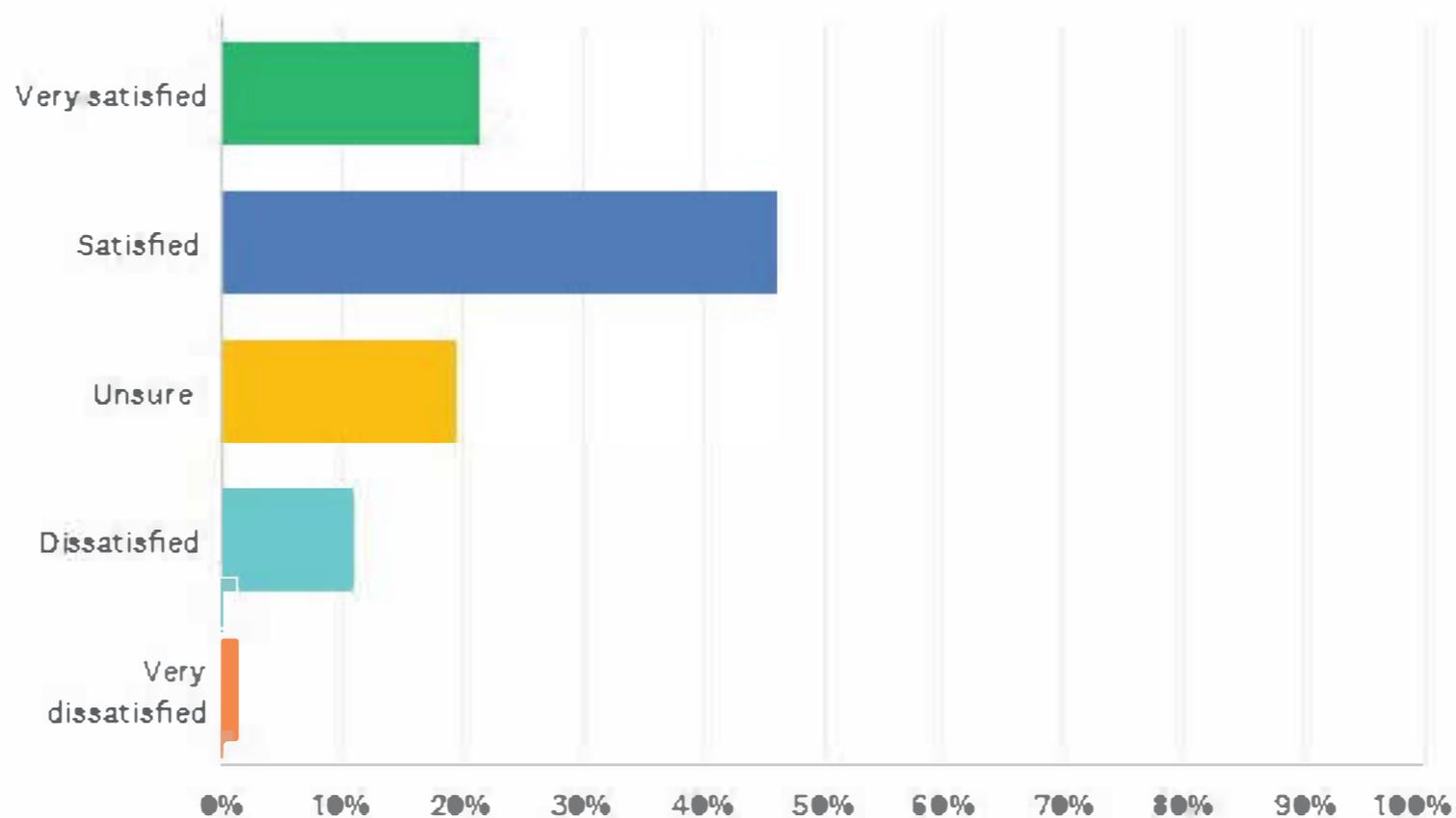
Q14 Indicate the overall quality of the jury trial(s) in which you have been involved that was conducted entirely through the use of remote video technology (a “fully remote” jury trial).



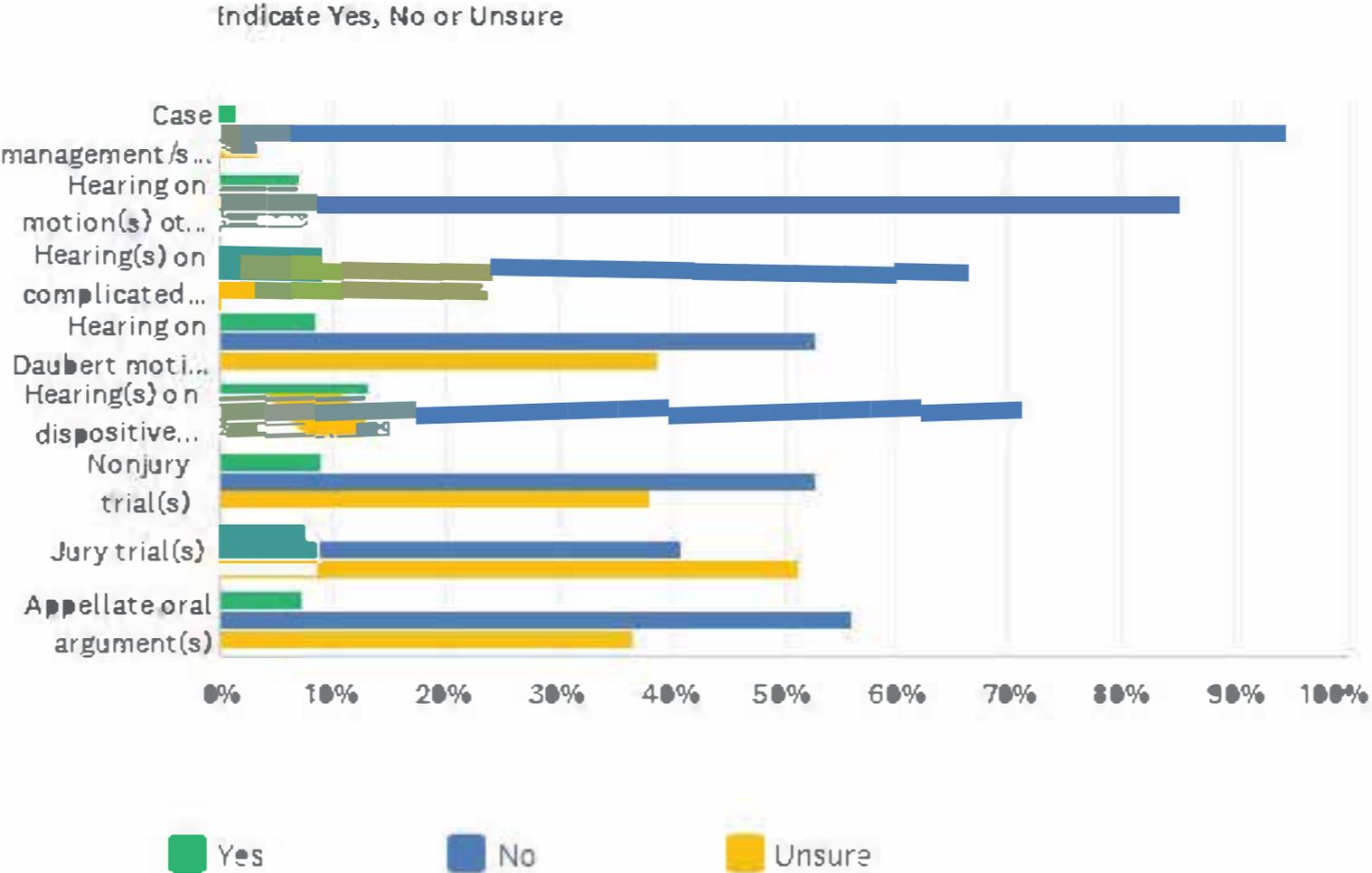
Q15 Indicate the overall quality of the appellate argument(s) in which you have been involved that included the use of remote technology.



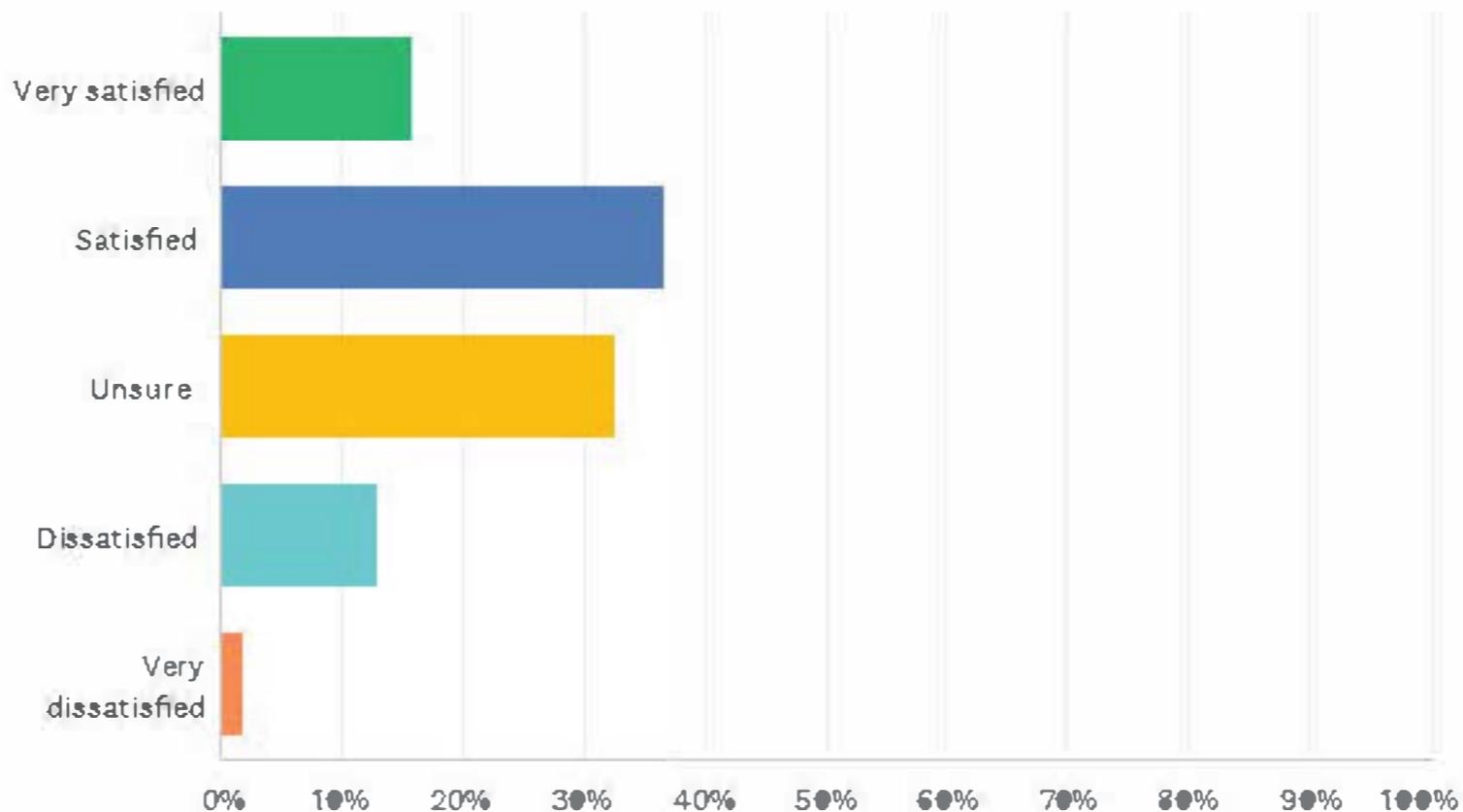
Q16 How satisfied are you that the use of remote video technology to conduct court proceedings provides parties with access to justice (i.e. avail themselves access to the courts with minimal barriers)?



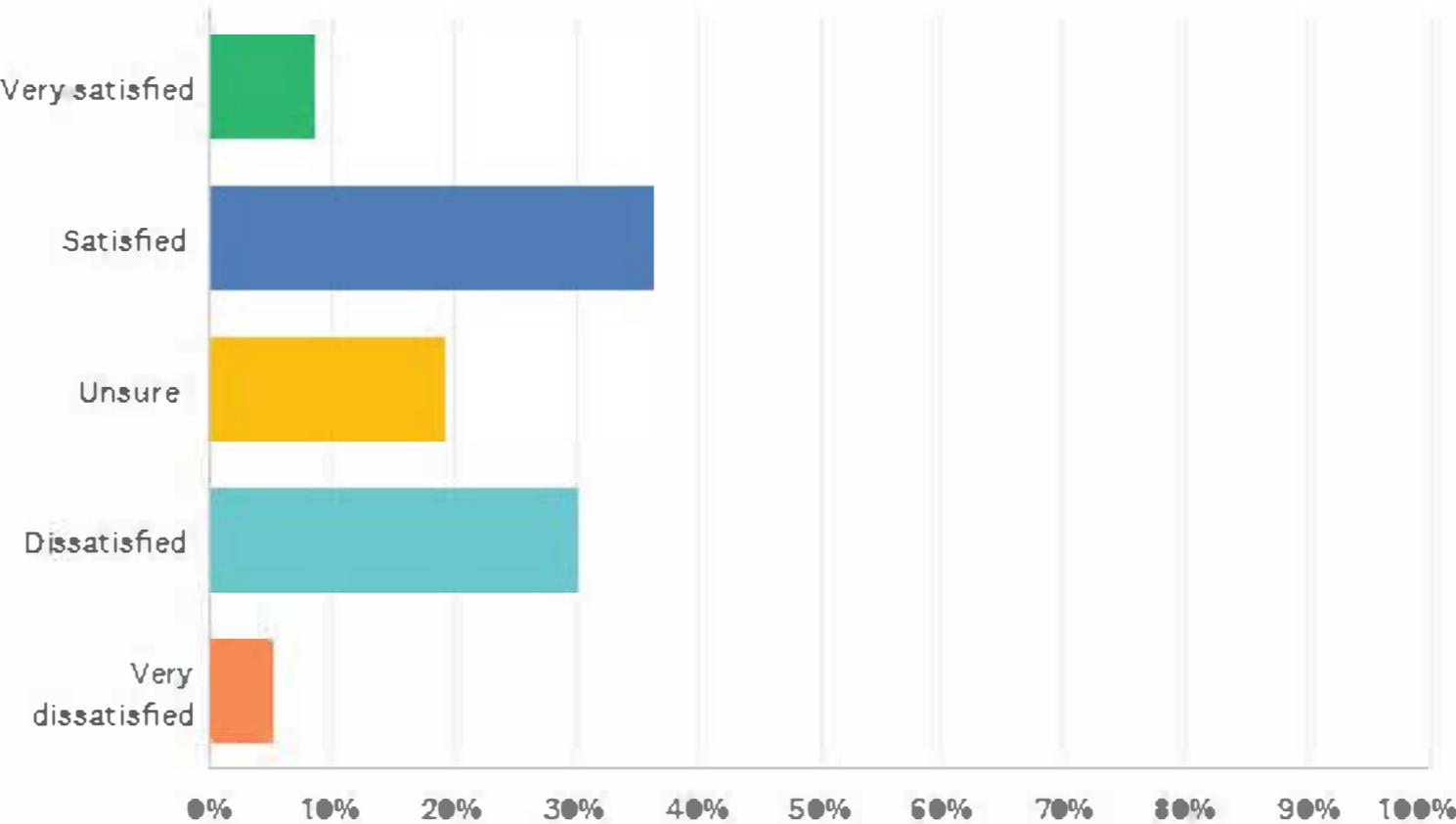
Q17 In your opinion, was the outcome for your client negatively affected by the remote video technology used in the proceeding, for any of the following? (Select all that apply.)



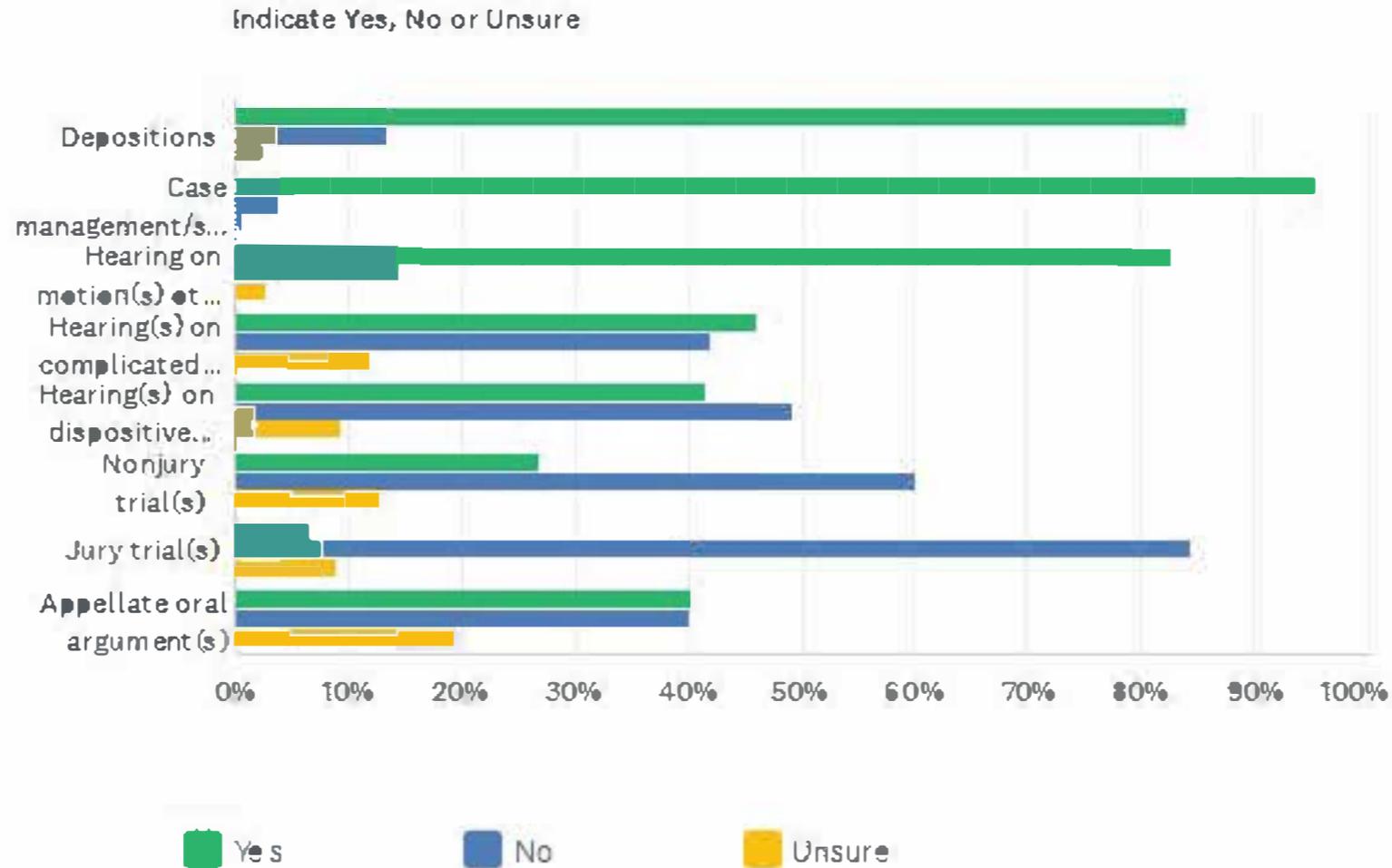
# Q18 How satisfied are you that the use of remote video technology to conduct court proceedings promotes public trust and confidence in the courts?



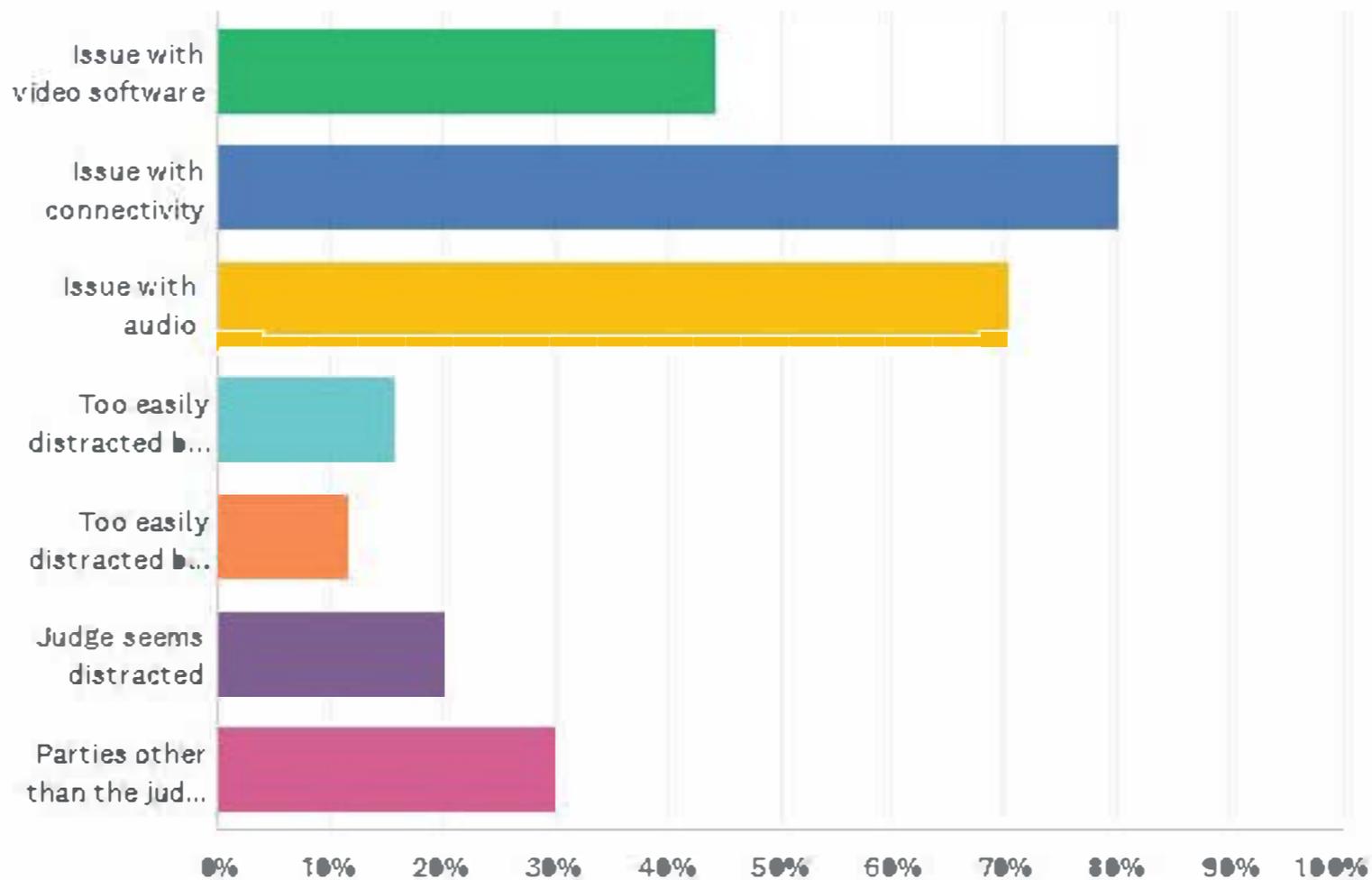
Q19 How satisfied are you that the use of remote video technology to conduct court proceedings promotes the traditional dignity and seriousness otherwise experienced during in-person court proceedings?



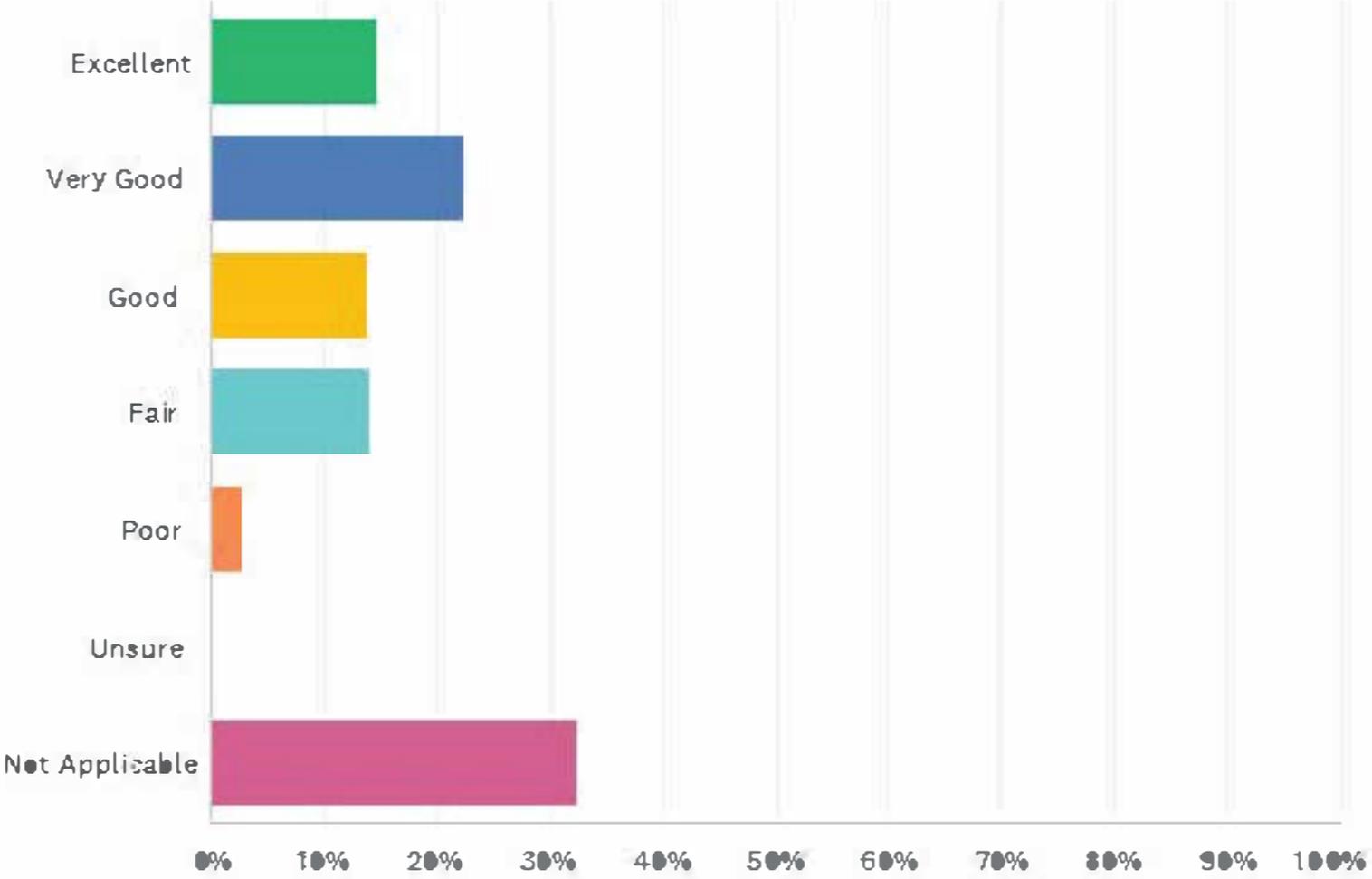
# Q20 Do you believe the court system should continue to incorporate the use of remote technology in the following types of civil court proceedings even after the end of the COVID-19 pandemic?



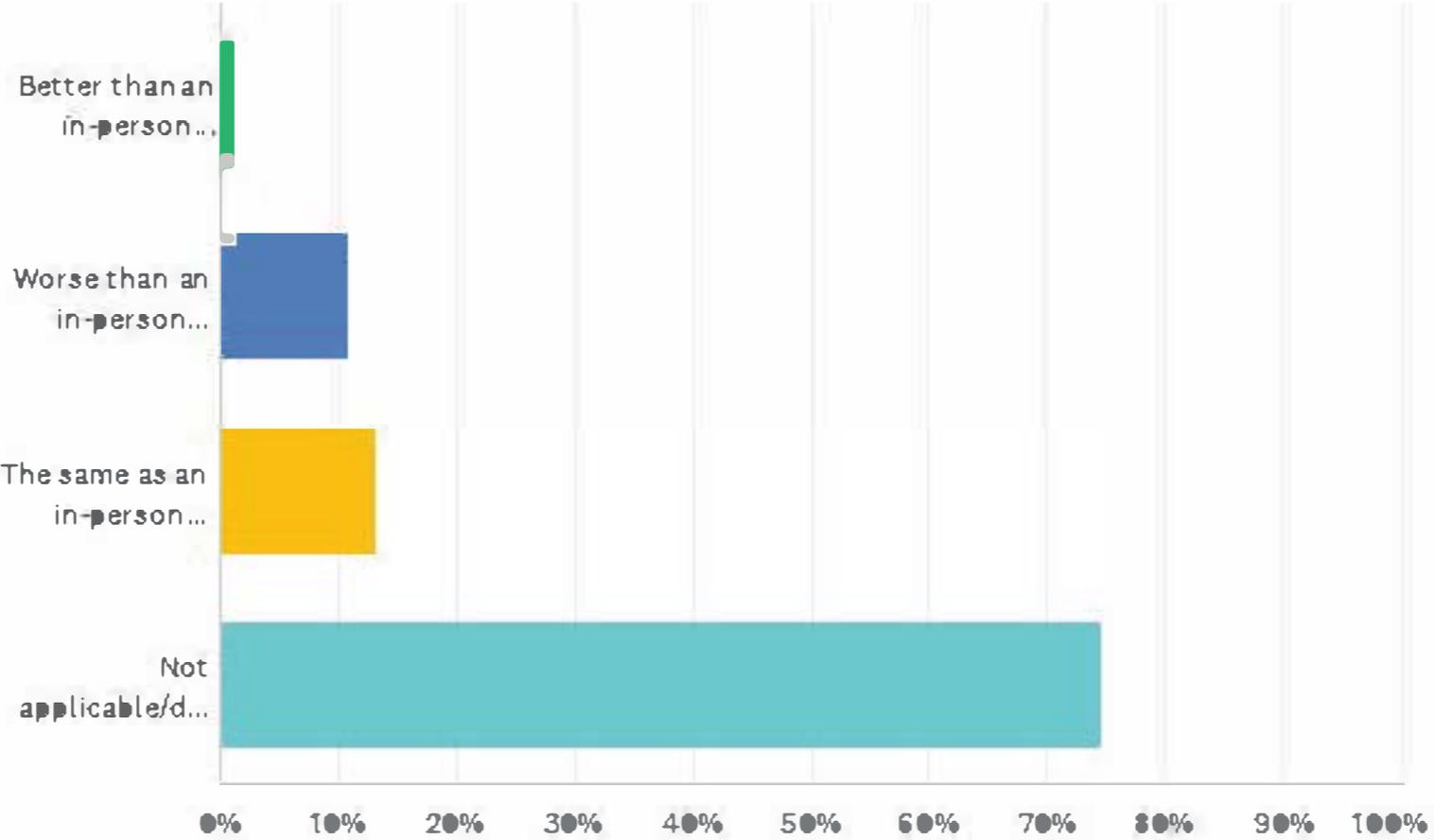
Q21 What difficulties, if any, have you had using remote technology as a part of court proceedings? Check all that apply.



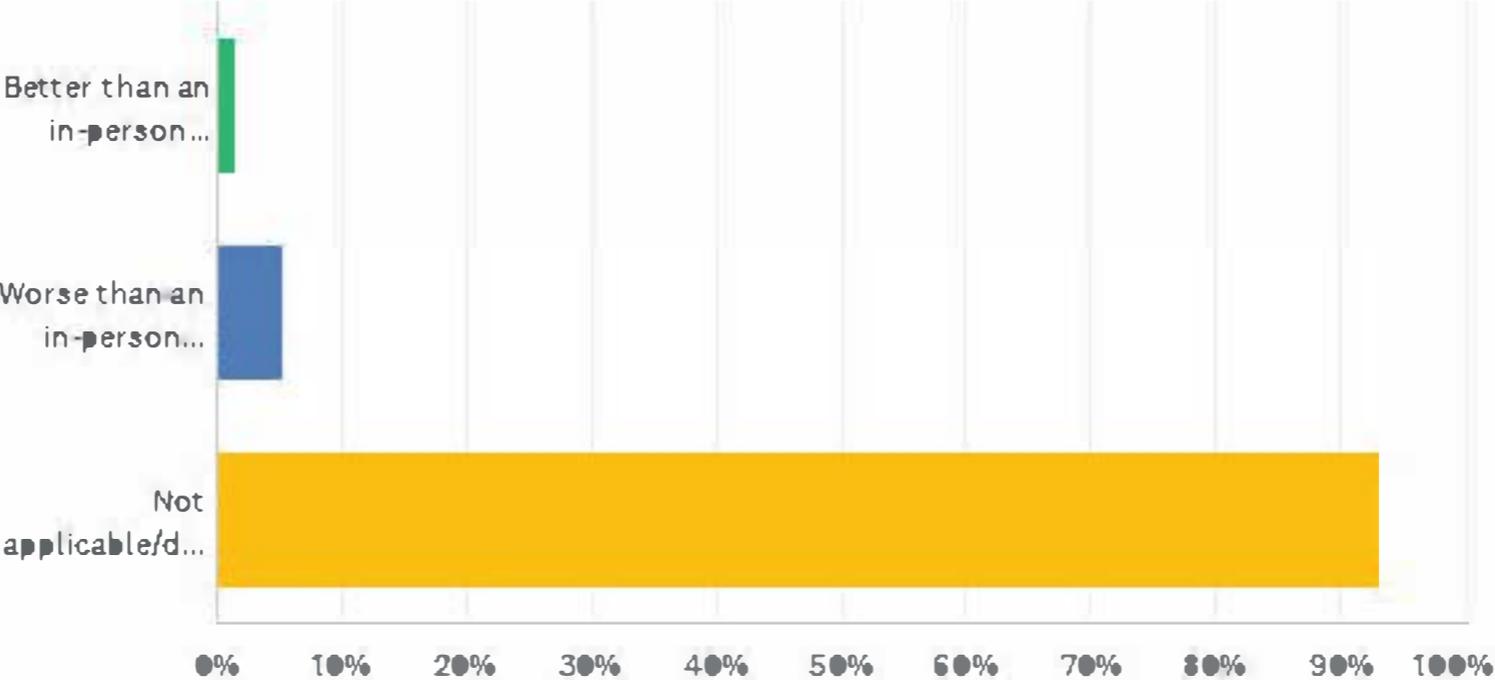
Q22 Indicate the quality of the mandatory mediation(s) in which you have been involved that included the use of remote video technology.



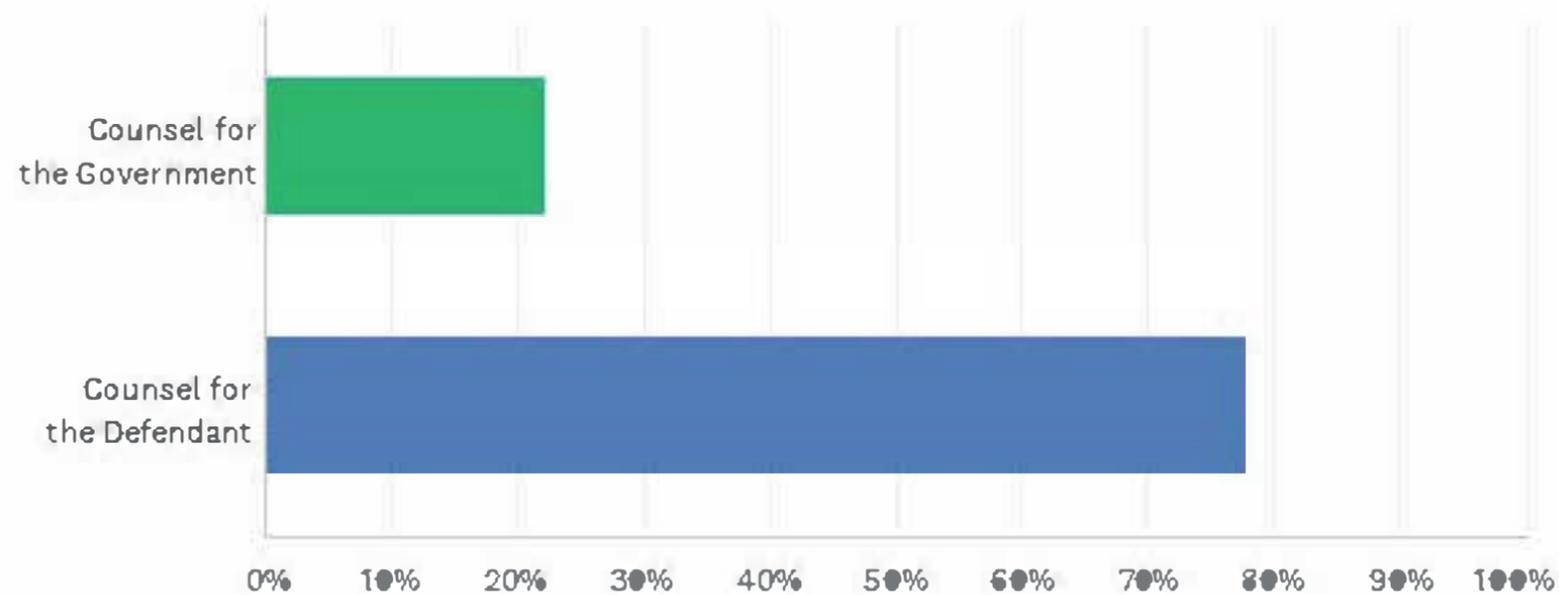
Q23 If you tried a non-jury trial entirely remote video technology, did you find the experience in terms of the client's "access to justice" was:



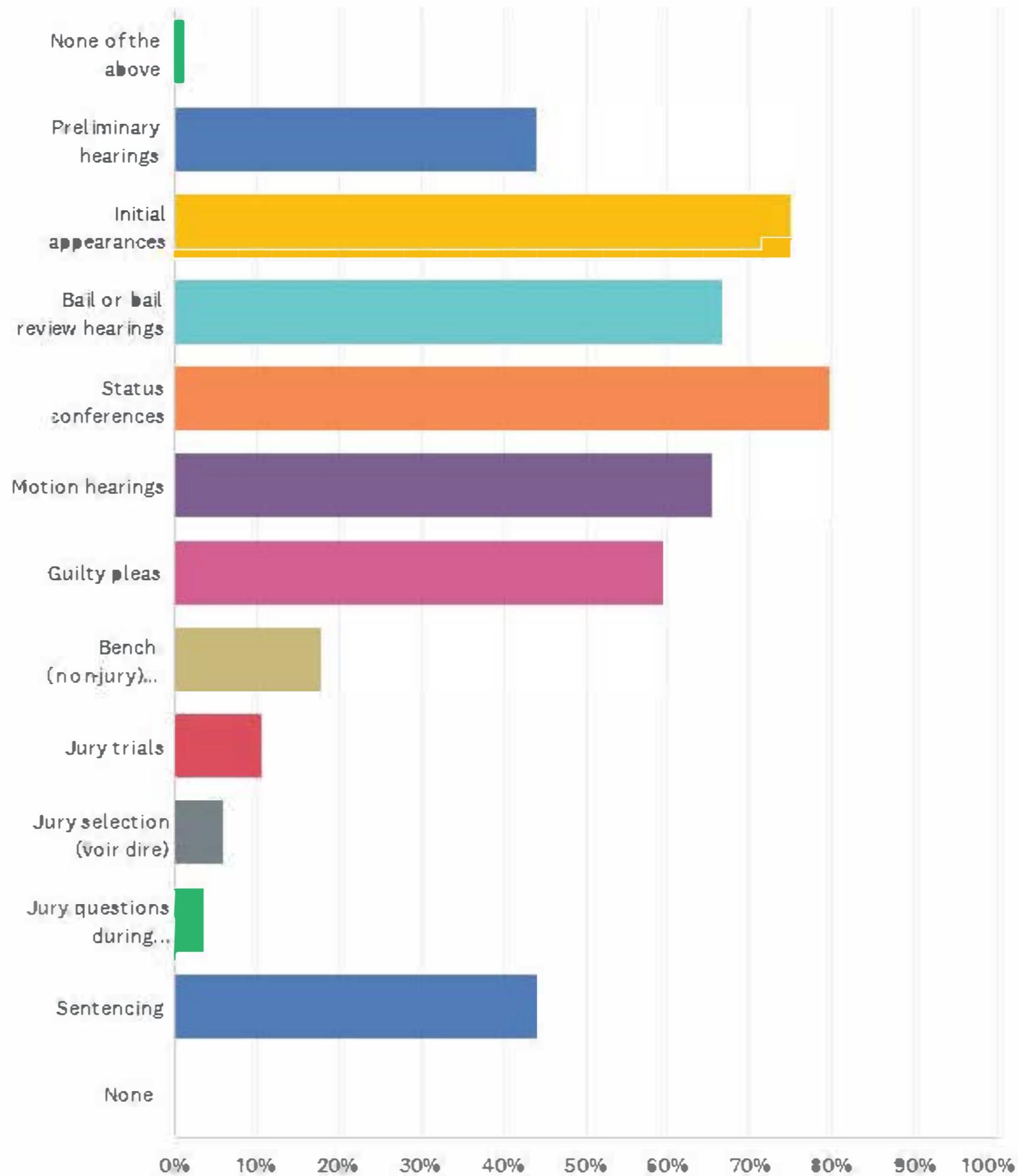
Q24 If you tried jury trial entirely by remote video technology, did you find the experience in terms of the client's "access to justice" was:



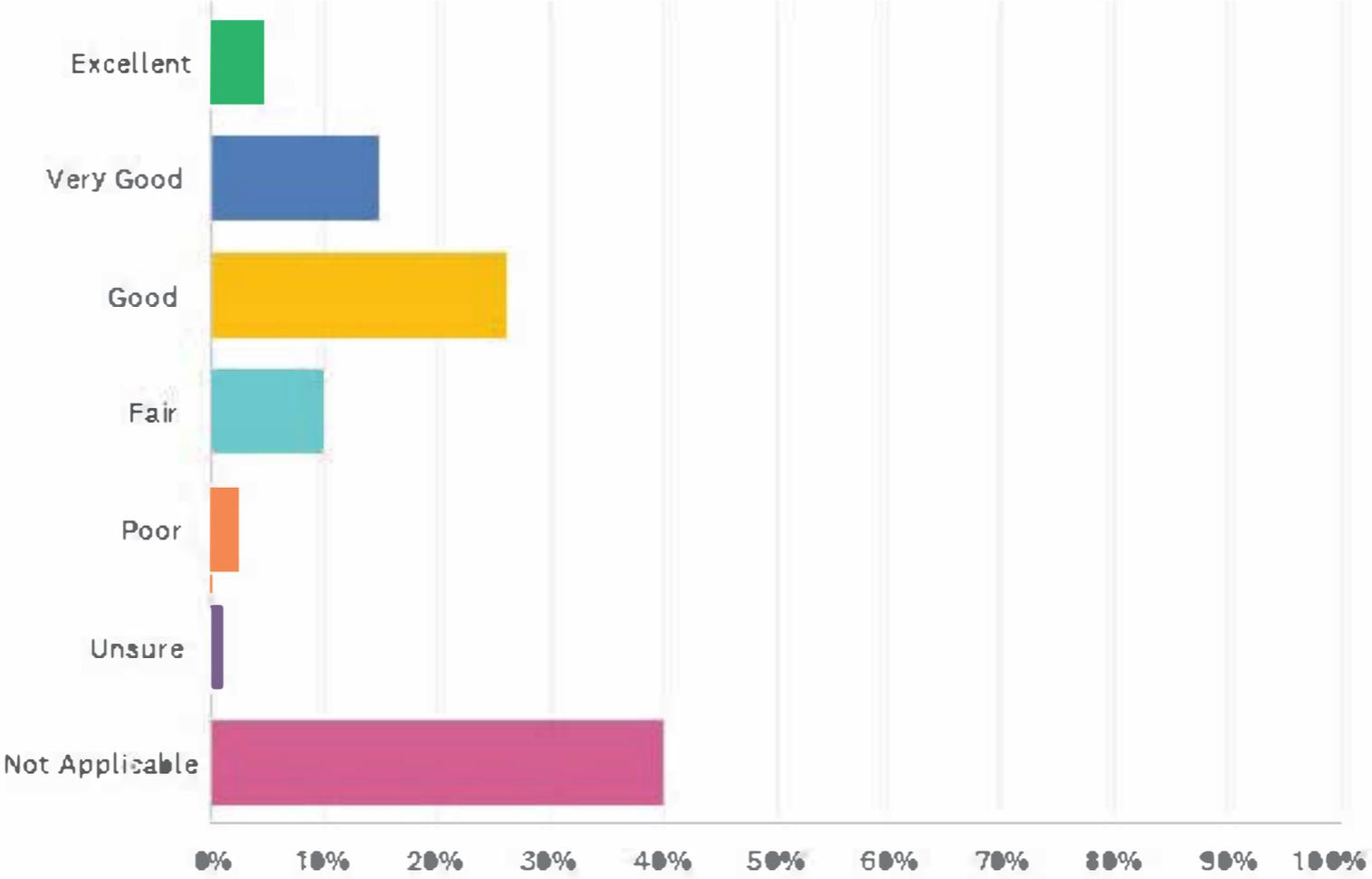
## Q26 Which of the following represents your primary practice?



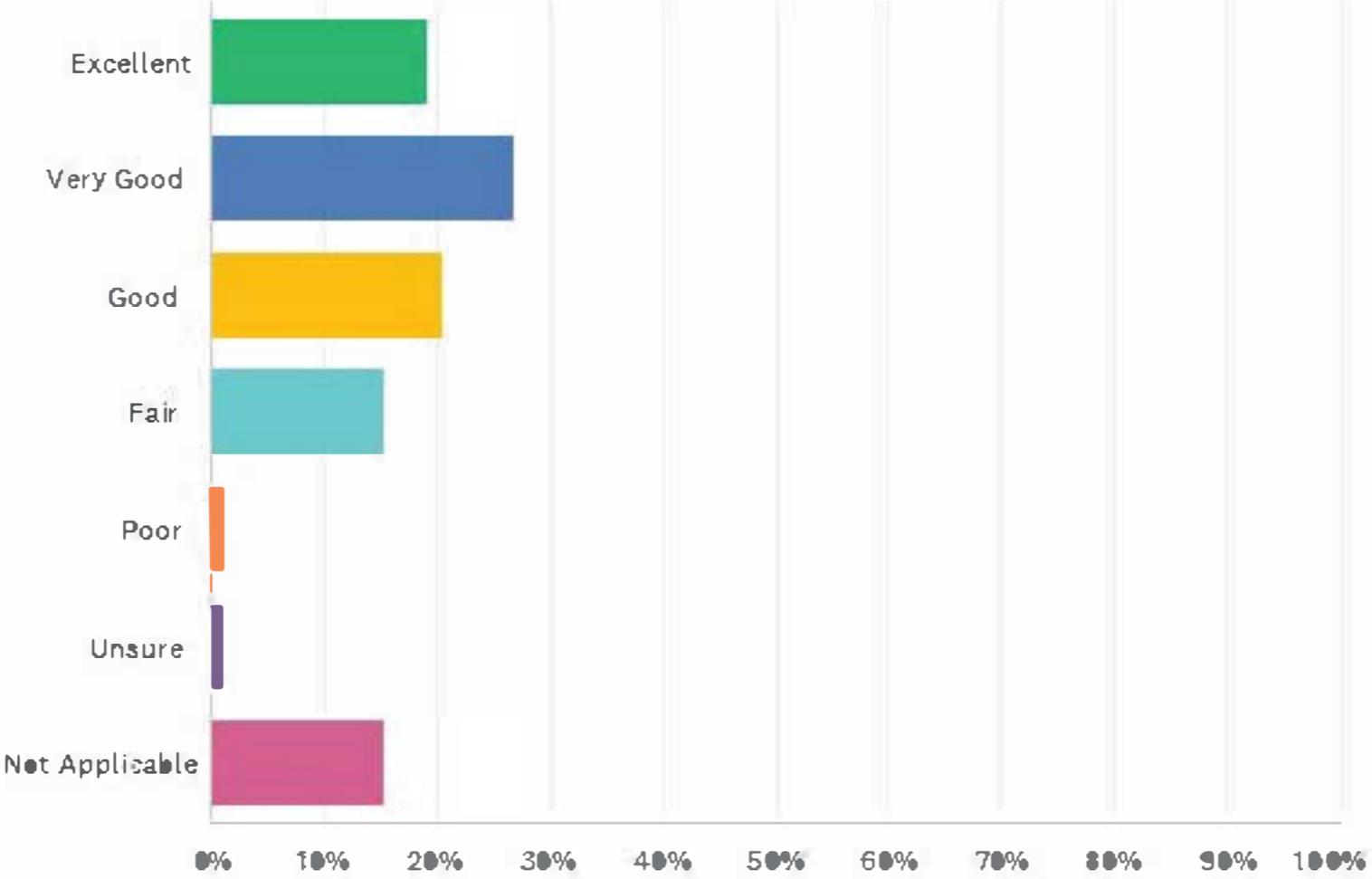
Q27 Which types of criminal proceedings have you been involved with while using remote video technology? (check each box that applies)



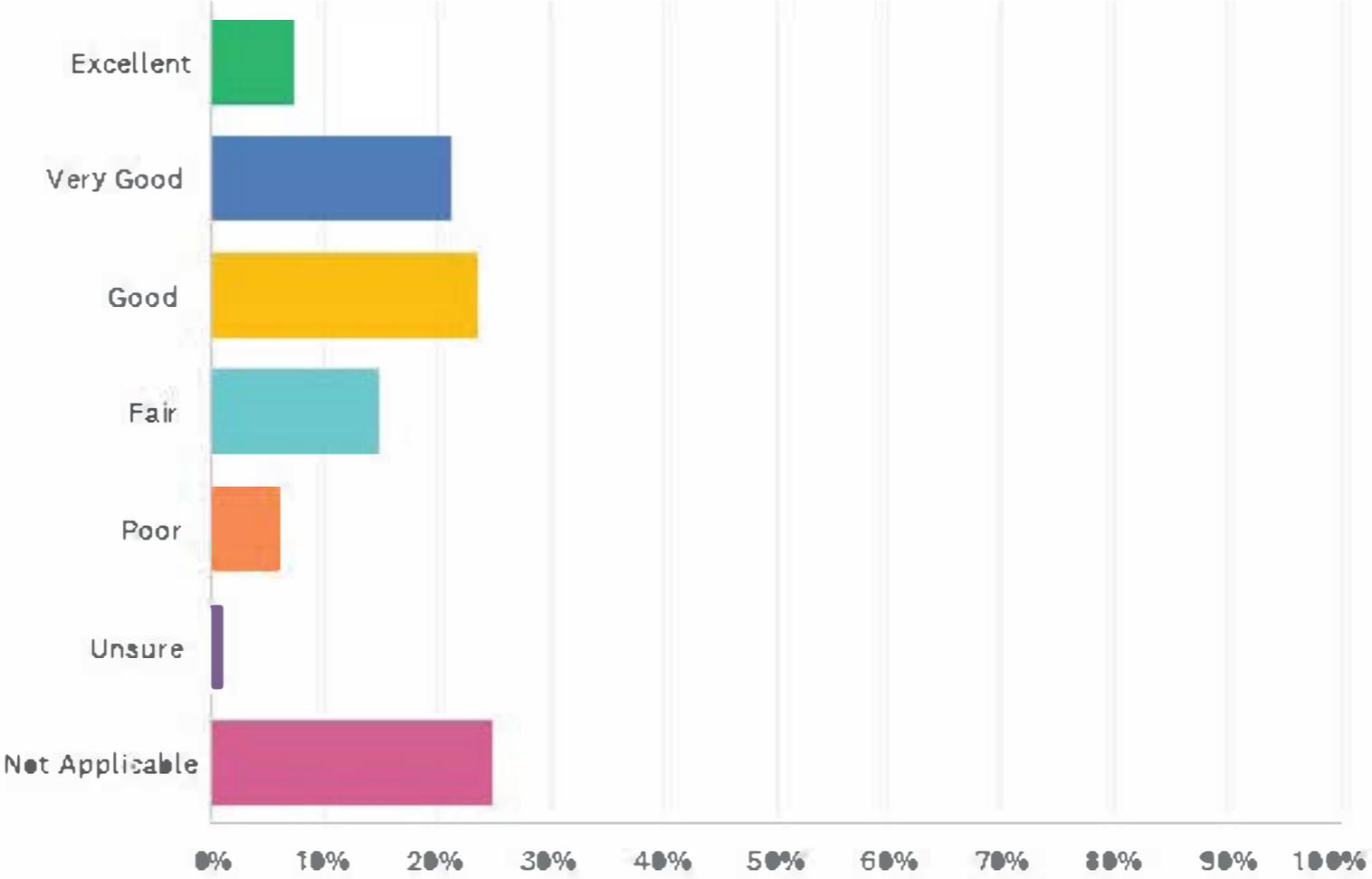
Q28 Indicate the overall quality of preliminary hearings in which you have been involved that included the use of remote video technology.



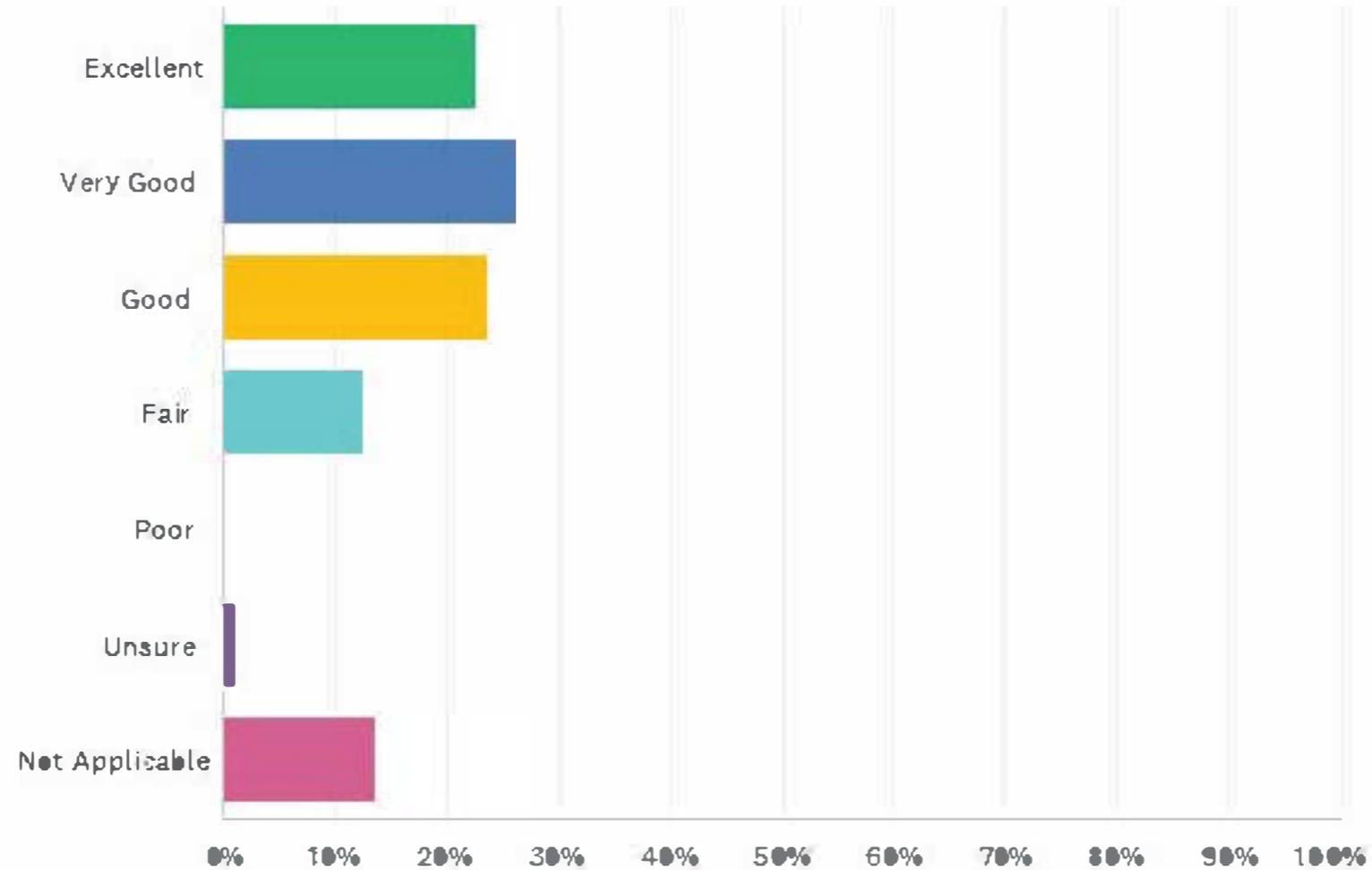
Q29 Indicate the overall quality of initial appearances involving entry of plea or otherwise in which you have been involved that included the use of remote video technology.



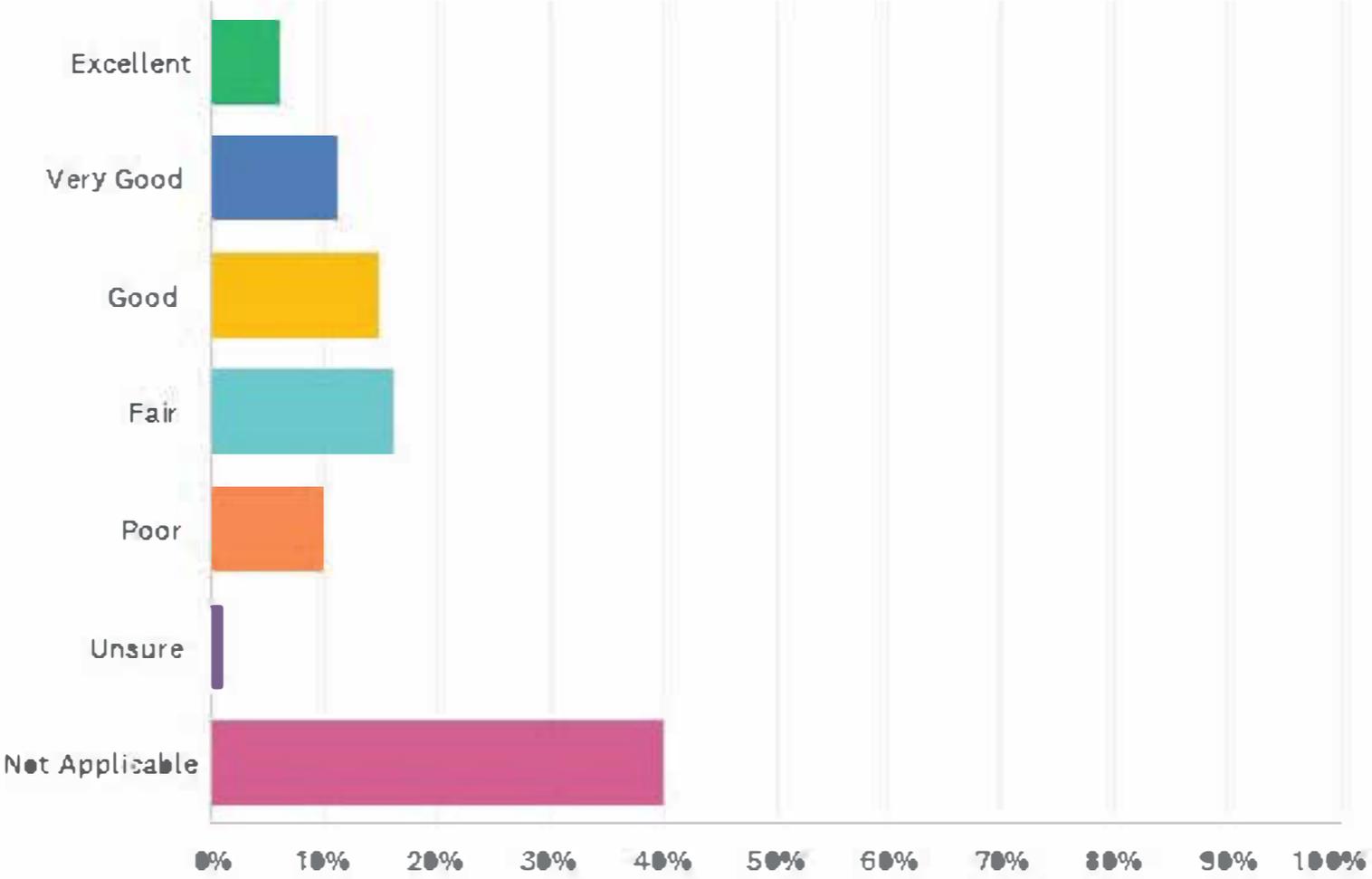
Q30 Indicate the overall quality of bail or bail review hearings in which you have been involved that included the use of remote video technology.



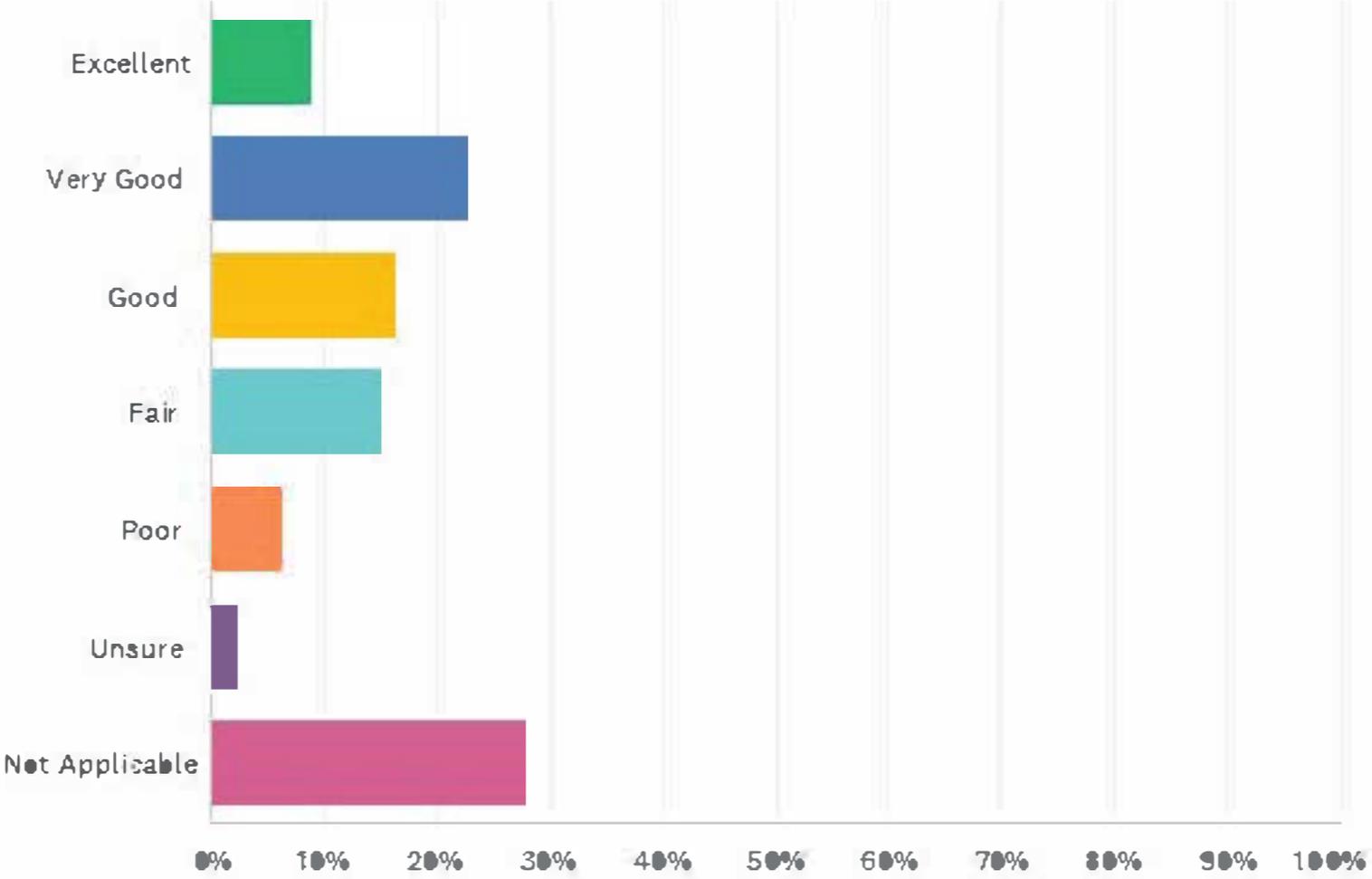
Q31 Indicate the overall quality of status conferences in which you have been involved that included the use of remote video technology.



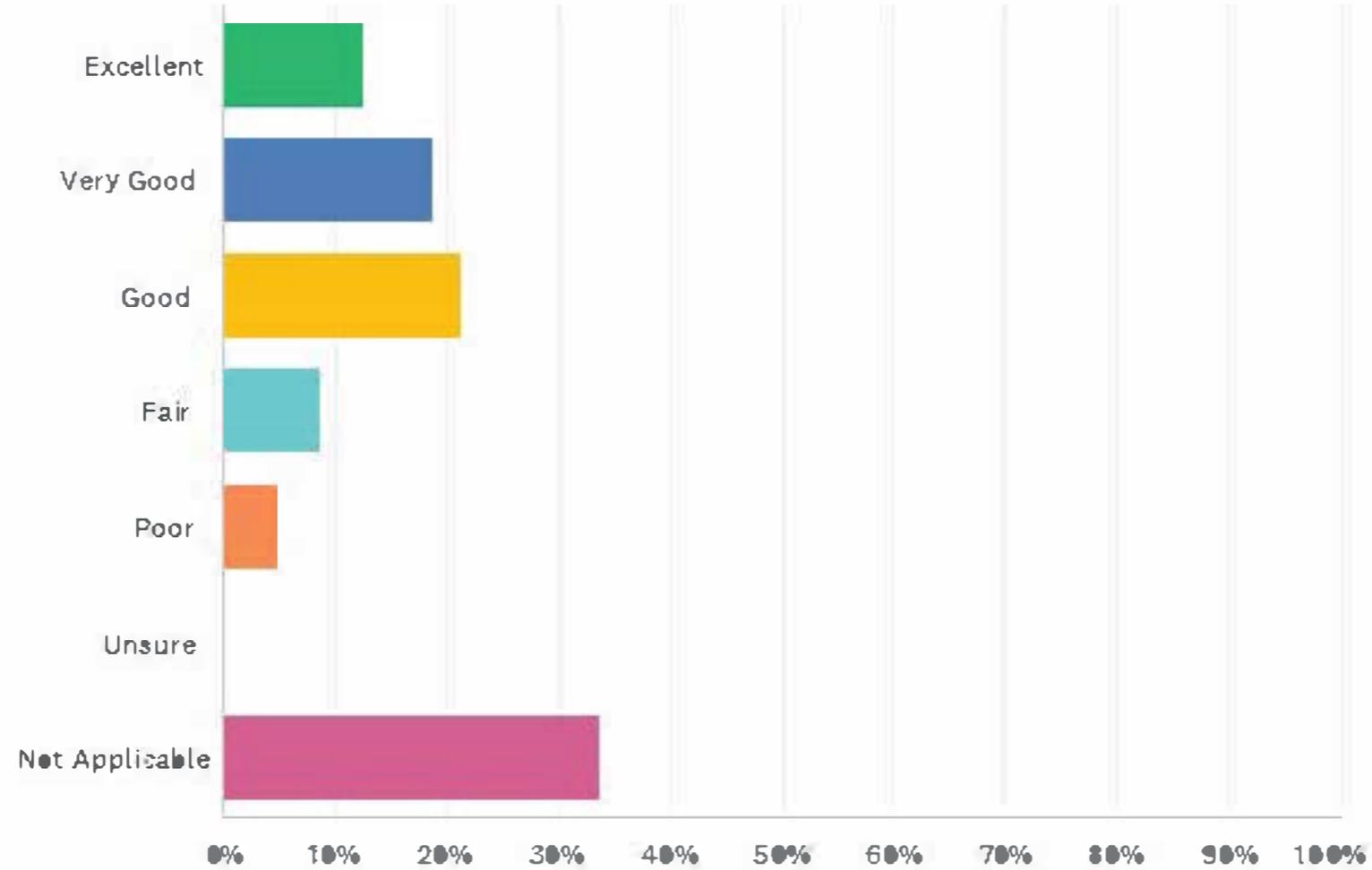
Q32 Indicate the overall quality of motion hearings involving live testimony in which you have been involved that included the use of remote video technology.



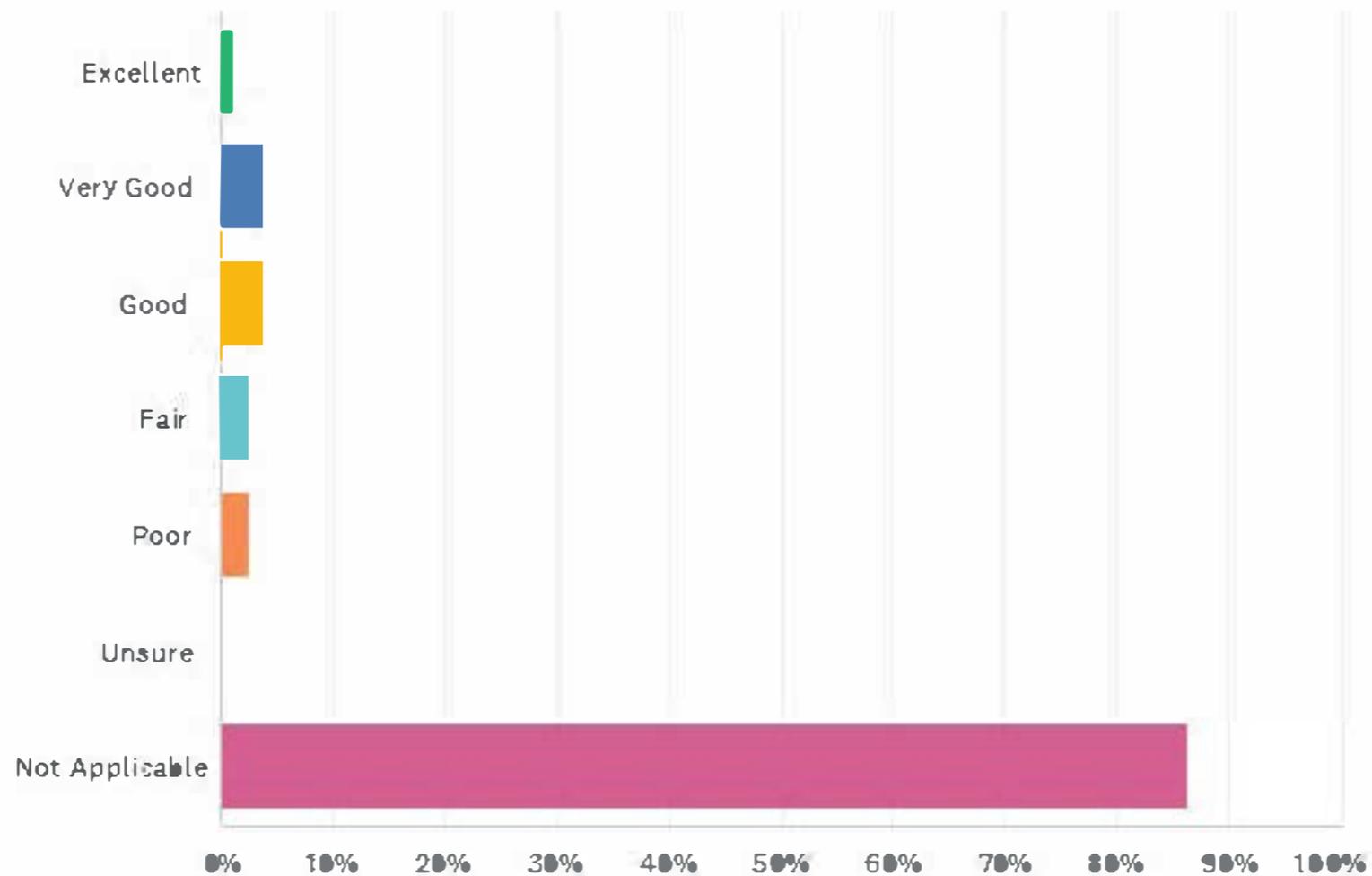
Q33 Indicate the overall quality of motion hearings not involving live testimony in which you have been involved that included the use of remote video technology.



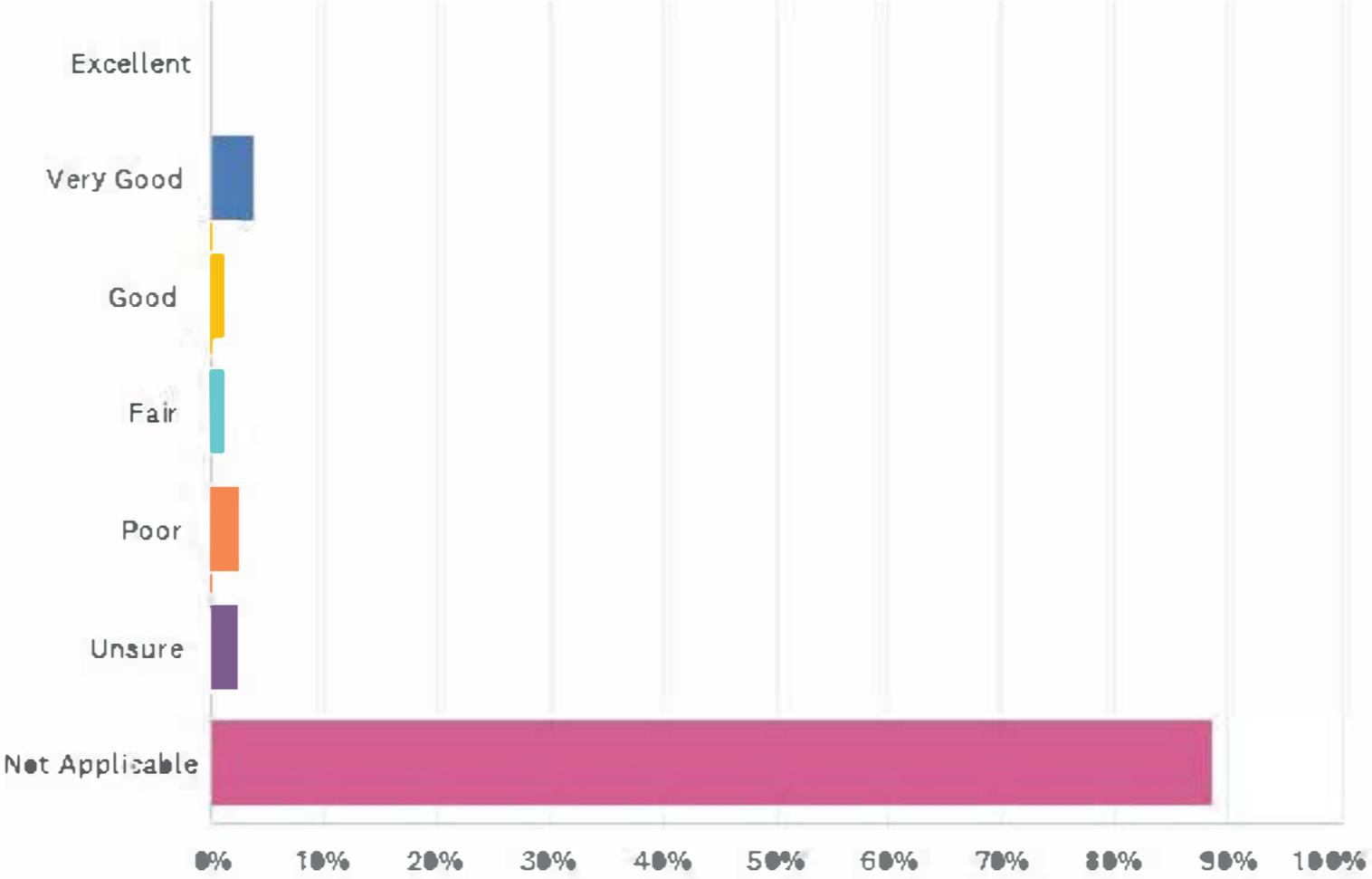
Q34 Indicate the overall quality of guilty plea proceedings in which you have been involved that included the use of remote video technology.



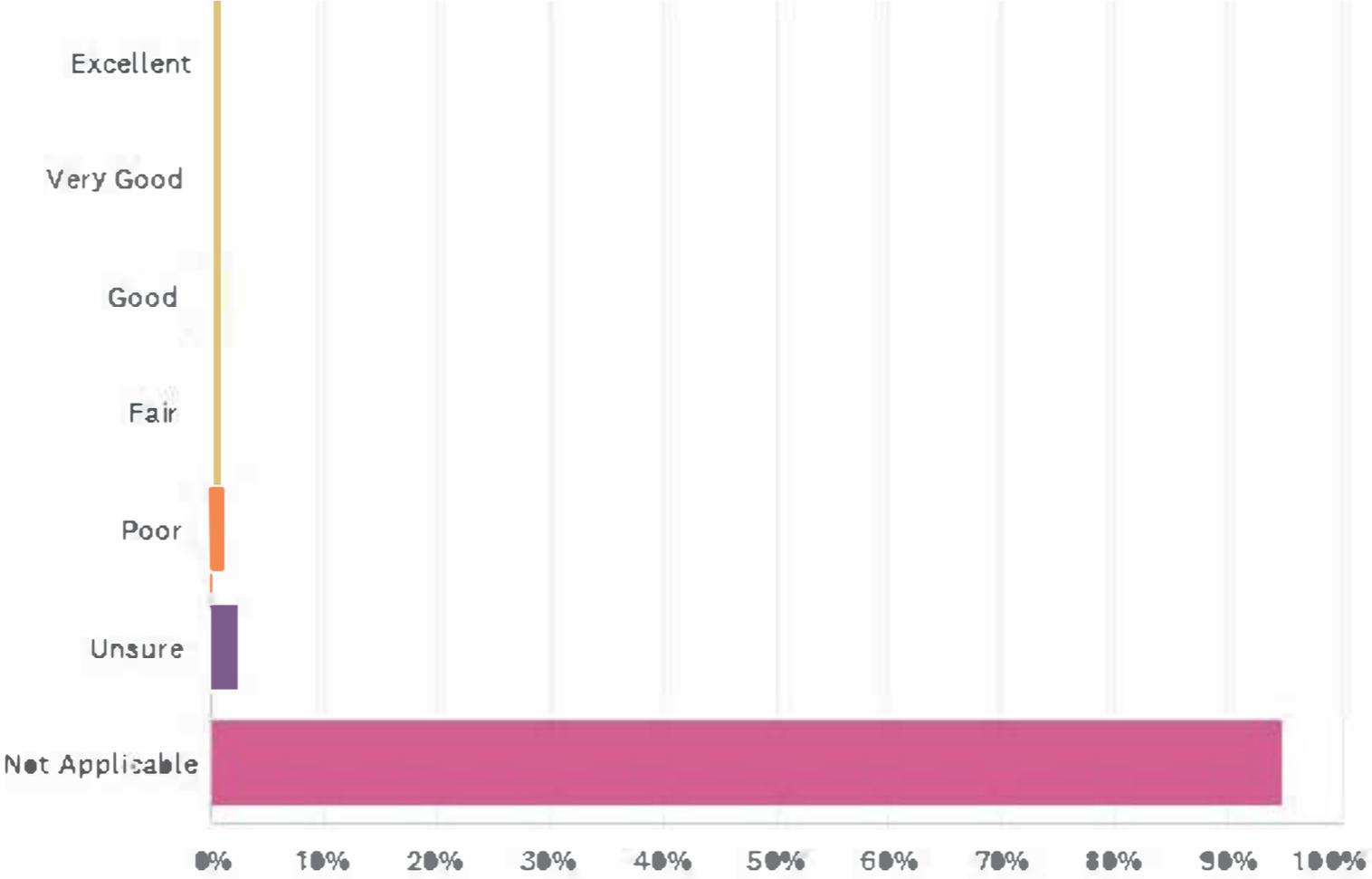
Q35 Indicate the overall quality of bench (non-jury) trials in which you have been involved that included the use of remote video technology.



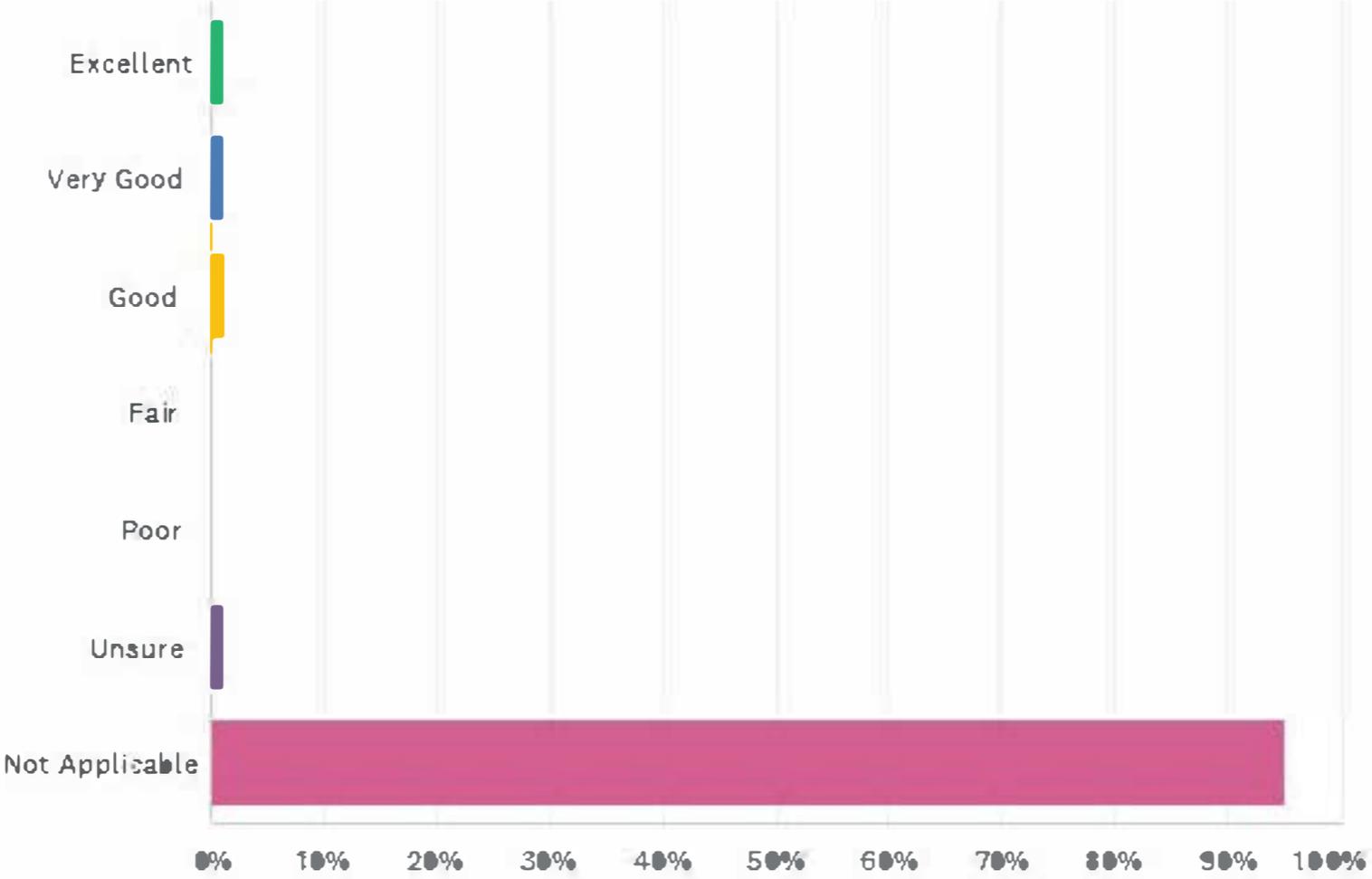
Q36 Indicate the overall quality of jury trials in which you have been involved that included the use of remote video technology.



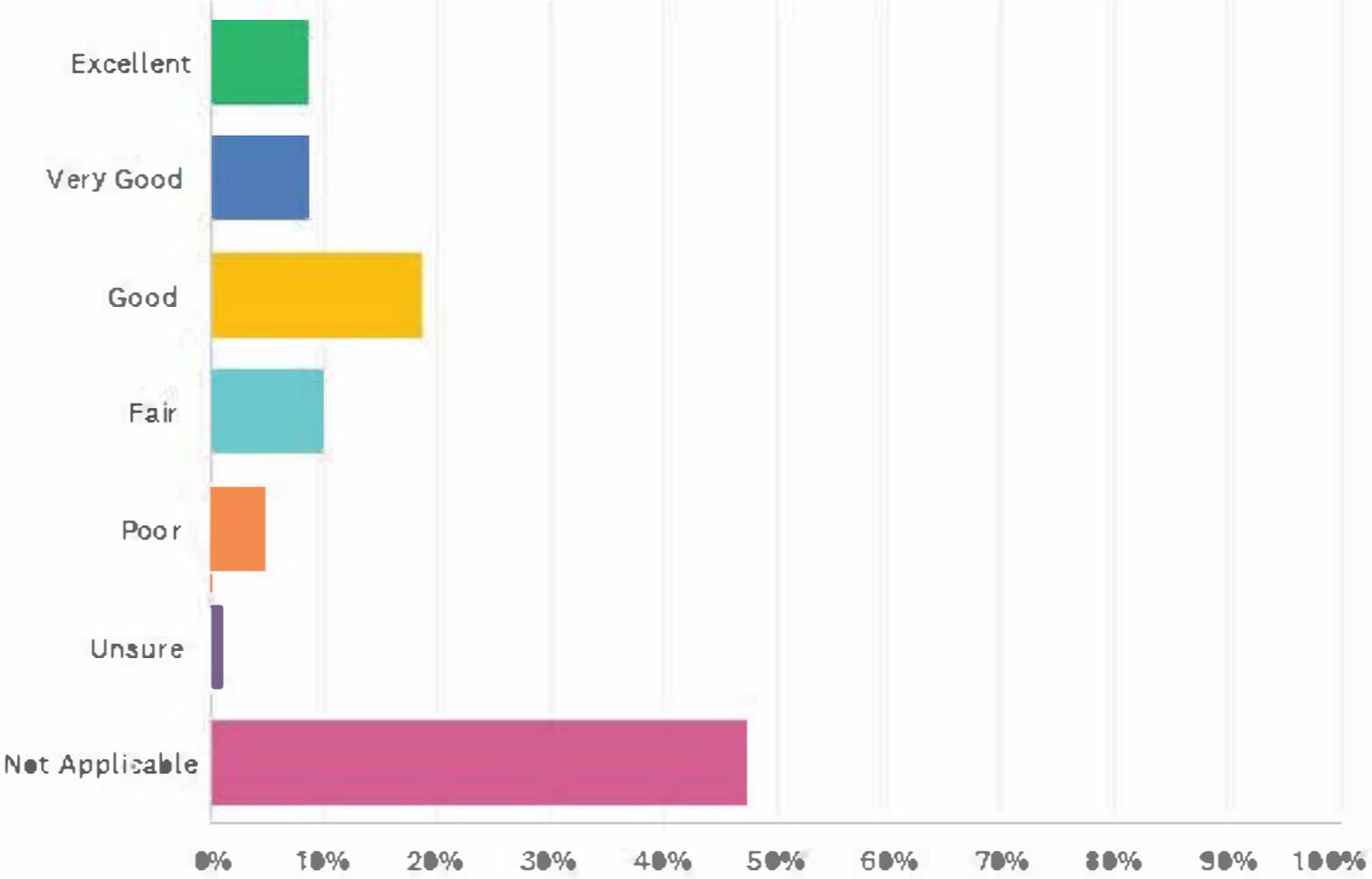
Q37 Indicate the overall quality of jury selection (voir dire) in which you have been involved that included the use of remote video technology.



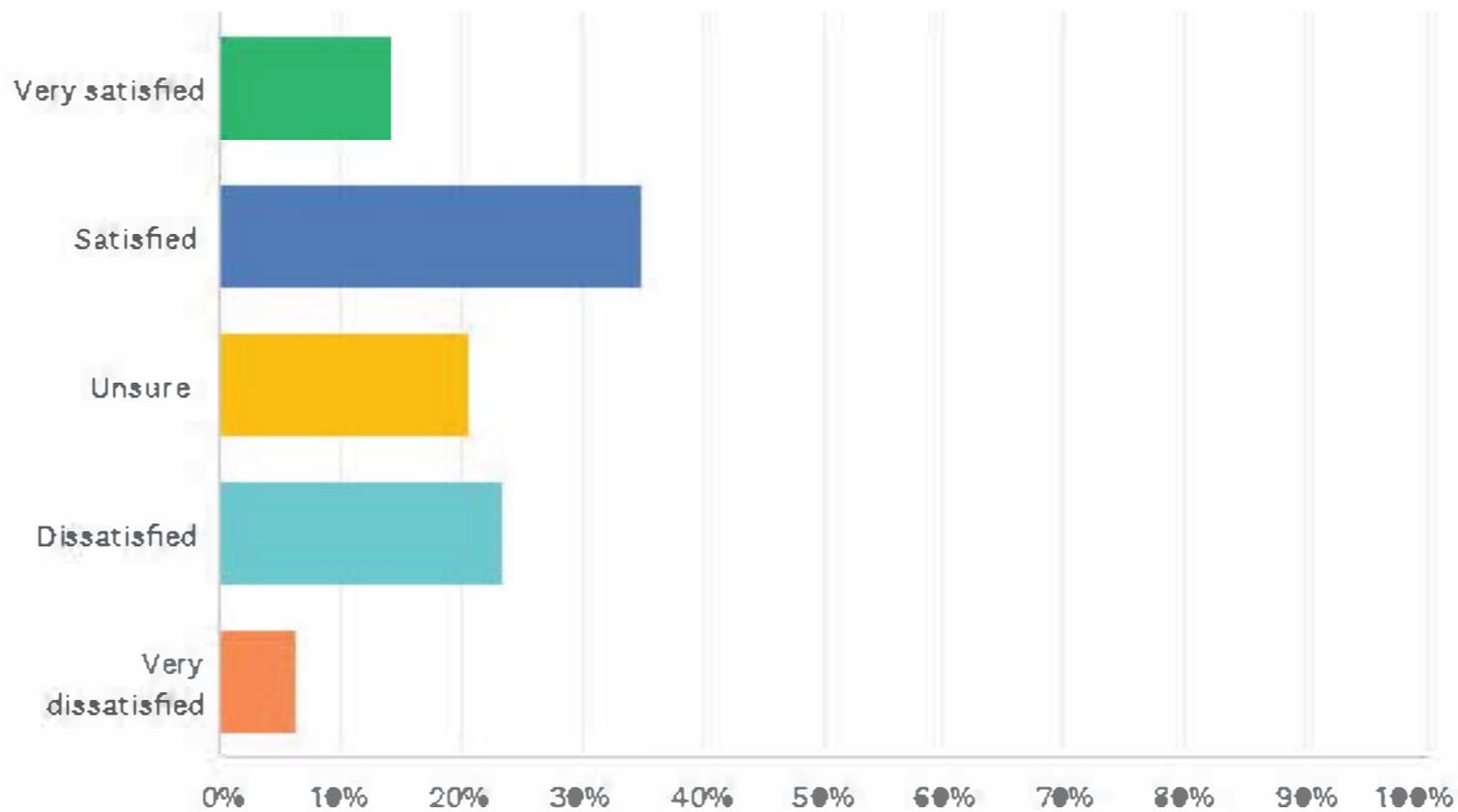
Q38 Indicate the overall quality of the handling of jury questions during deliberations in which you have been involved that included the use of remote video technology.



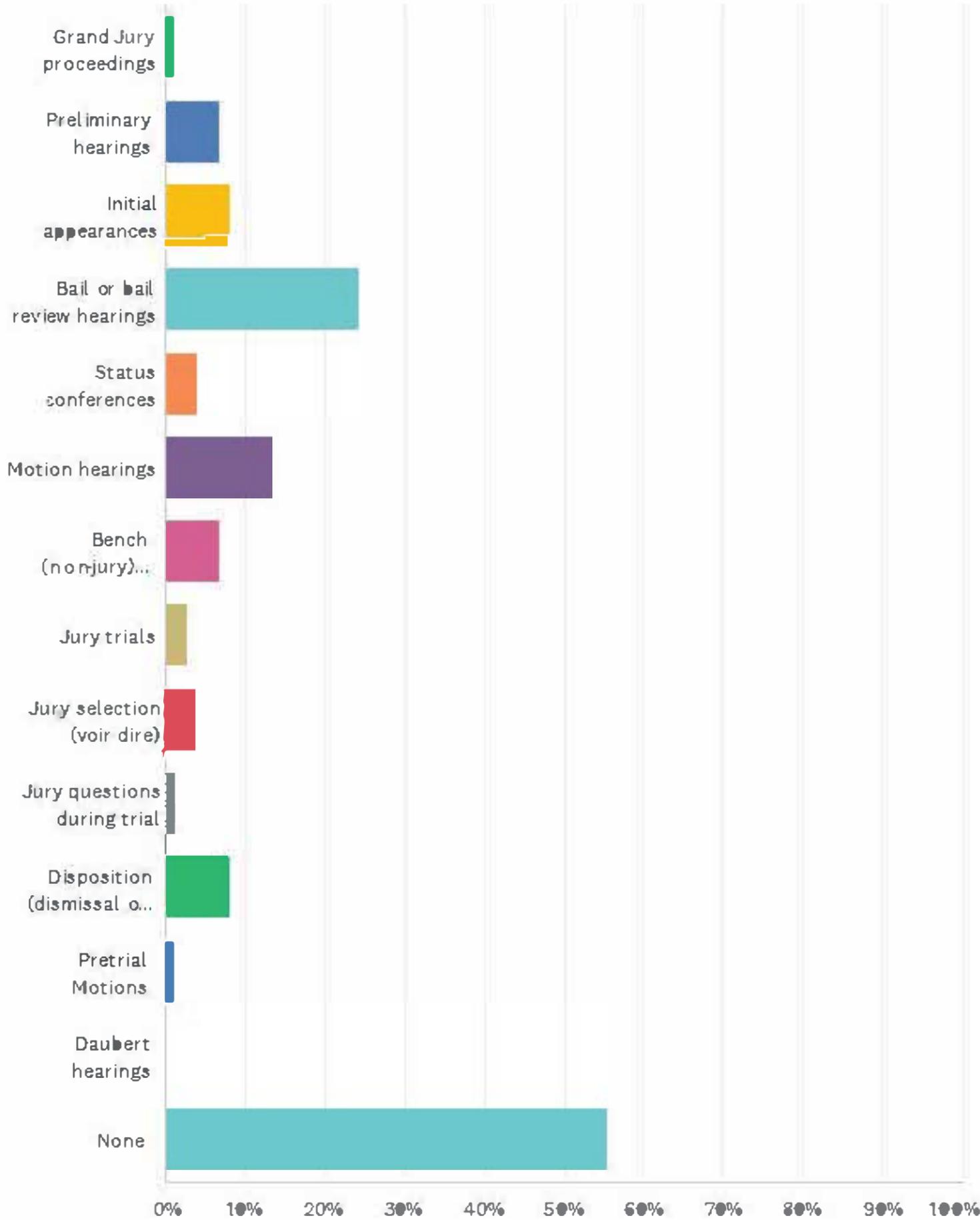
Q39 Indicate the overall quality of sentencing hearings in which you have been involved that included the use of remote video technology.



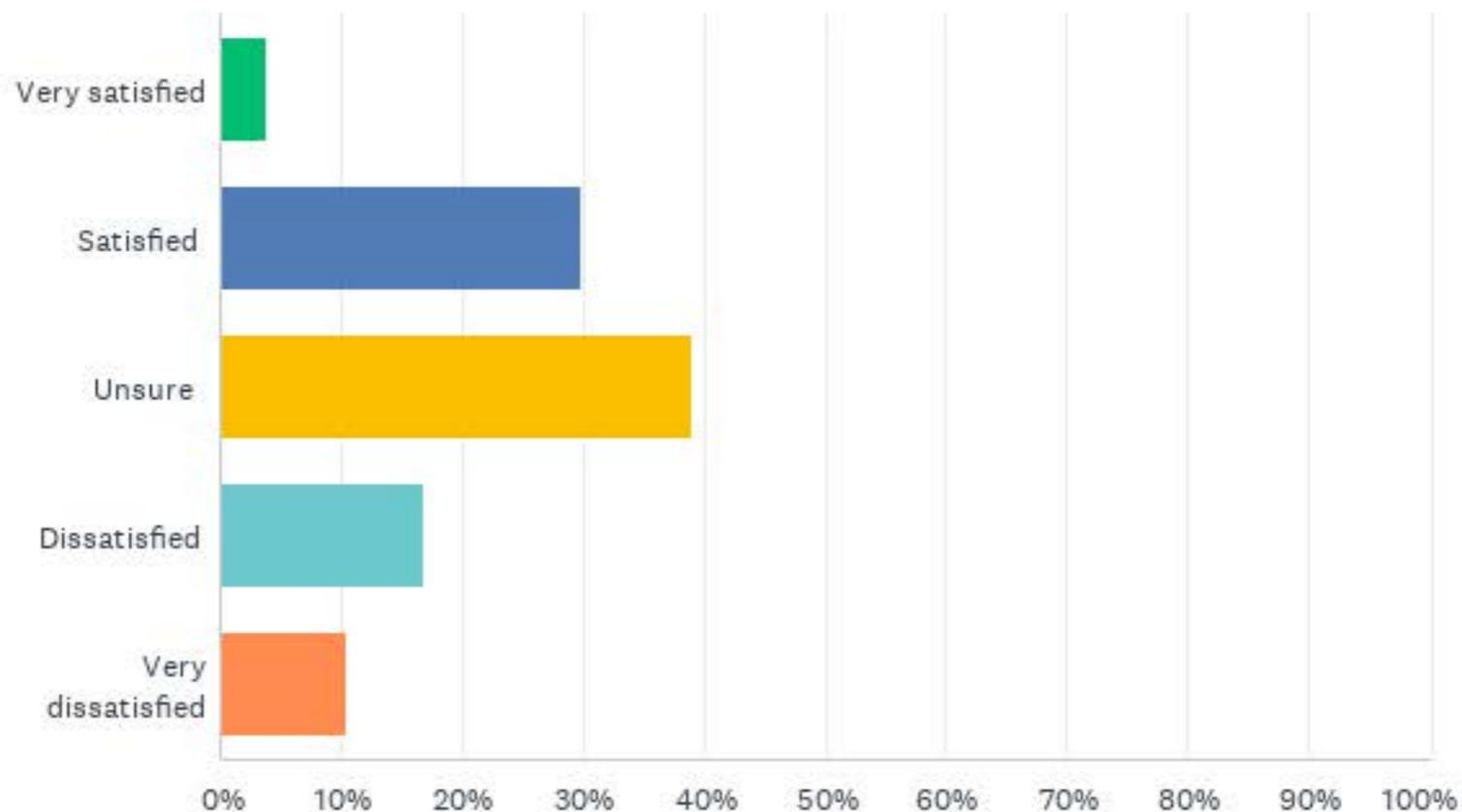
# Q40 How satisfied are you that the use of remote video technology to conduct court proceedings provides parties with their constitutional rights?



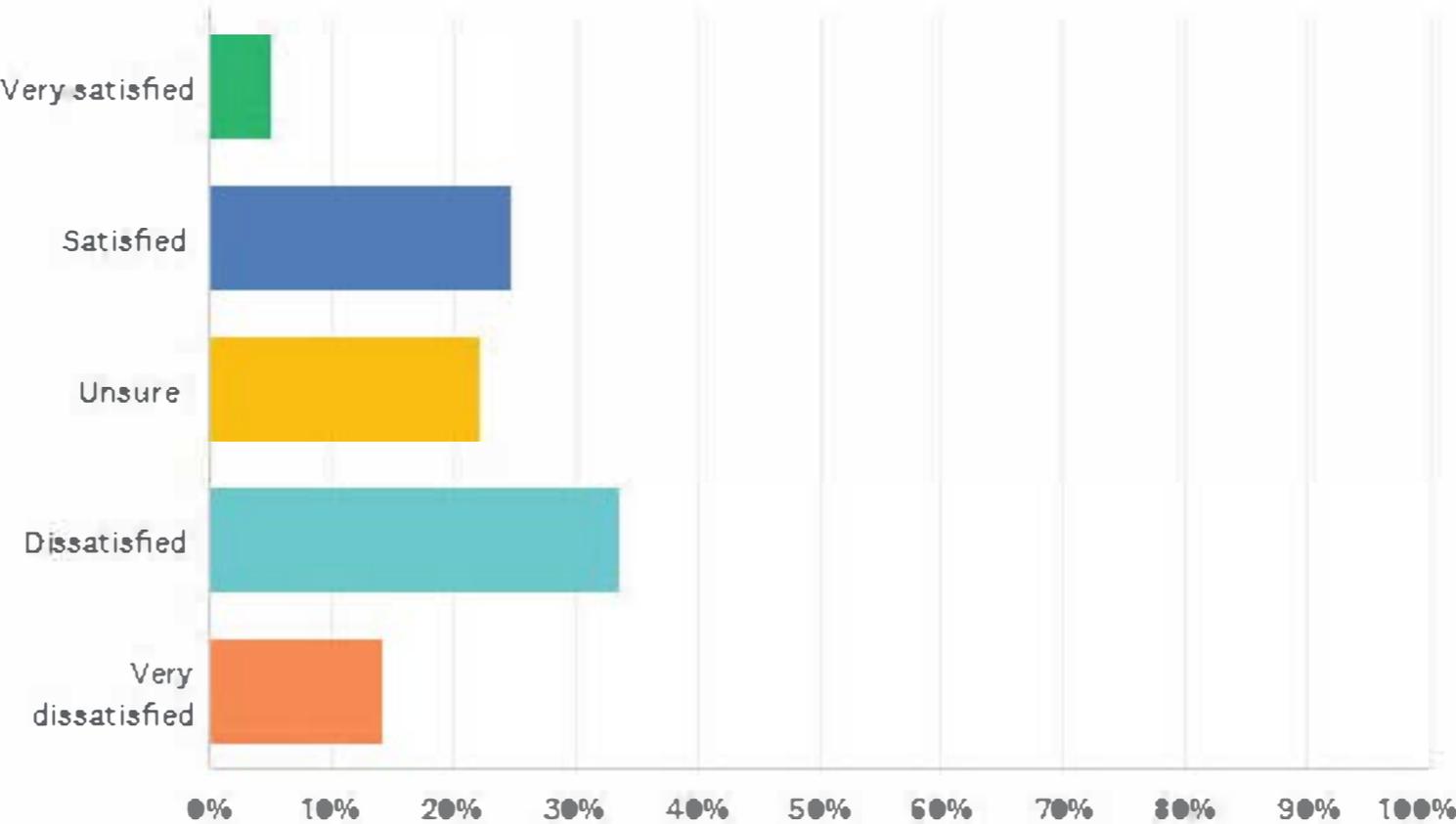
Q41 In your opinion, was the outcome for your client negatively affected by the remote video technology format of the proceeding, for any of the following? (Select all that apply.) Note: if you are a prosecutor, state your view from the standpoint of the citizens in the government entity that employs you.



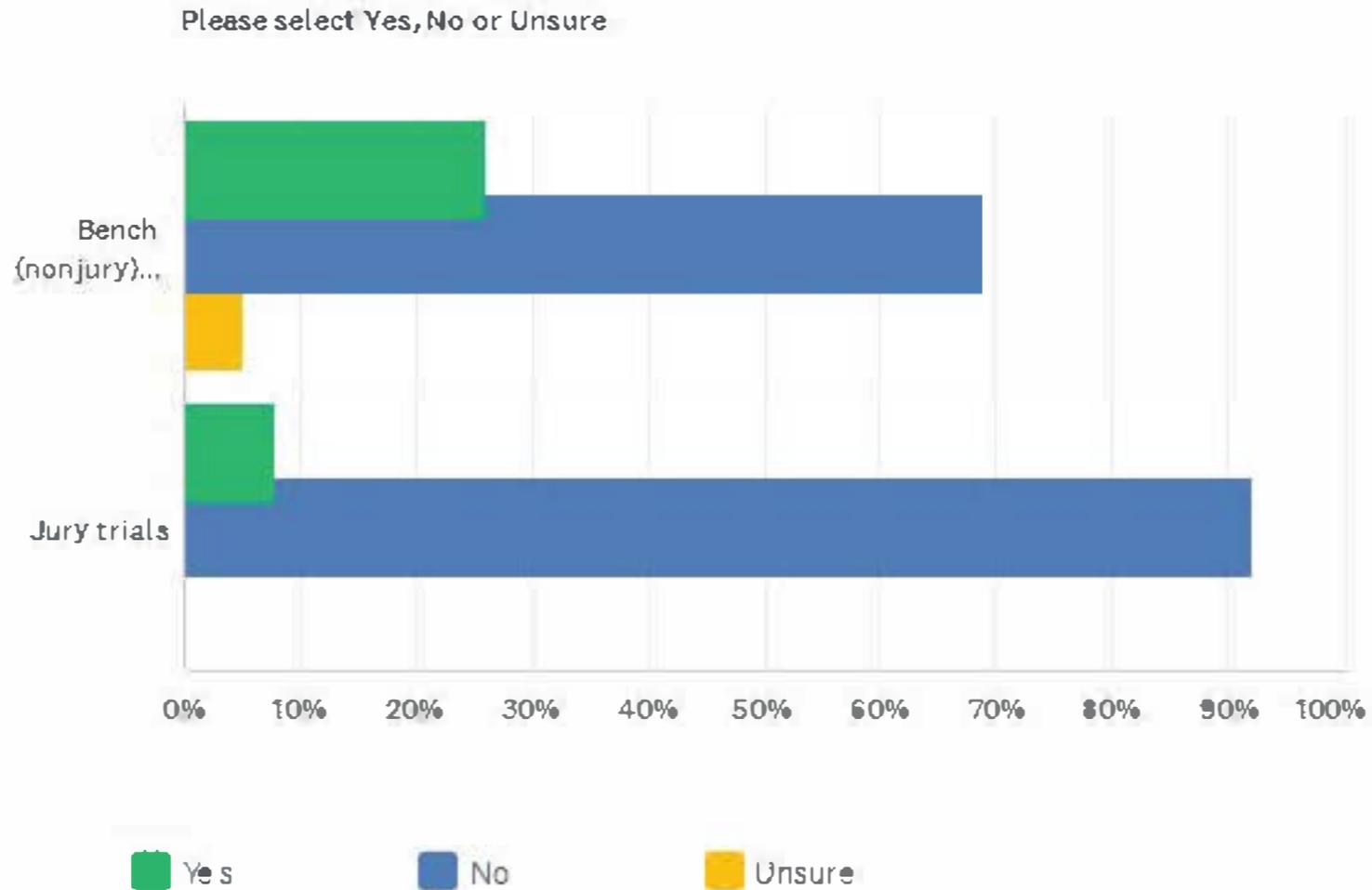
Q42 How satisfied are you that the use of remote video technology to conduct court proceedings promotes public trust and confidence in the courts?



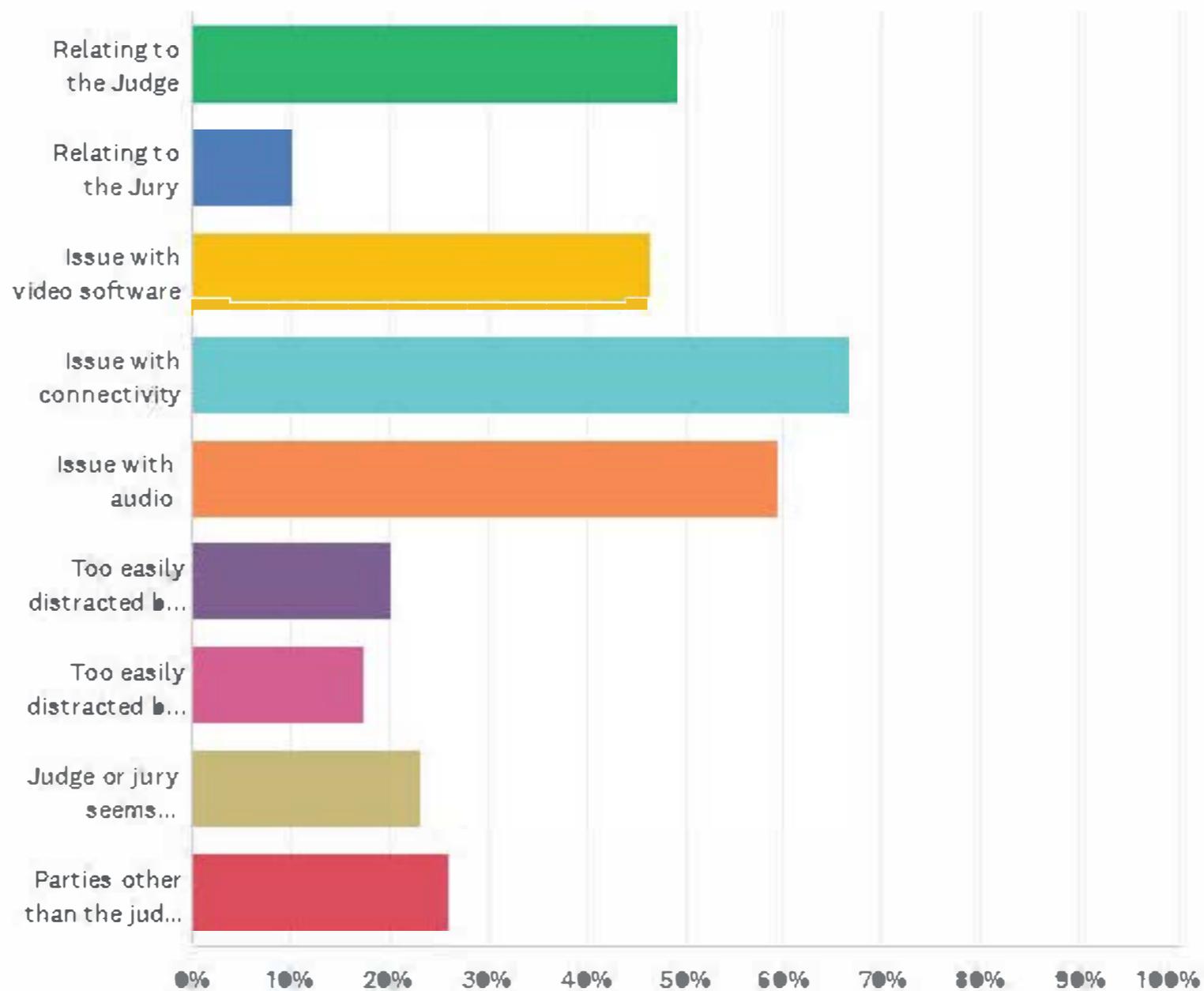
Q43 How satisfied are you that the use of remote video technology to conduct court proceedings promotes the traditional dignity and seriousness otherwise experienced during in-person court proceedings?



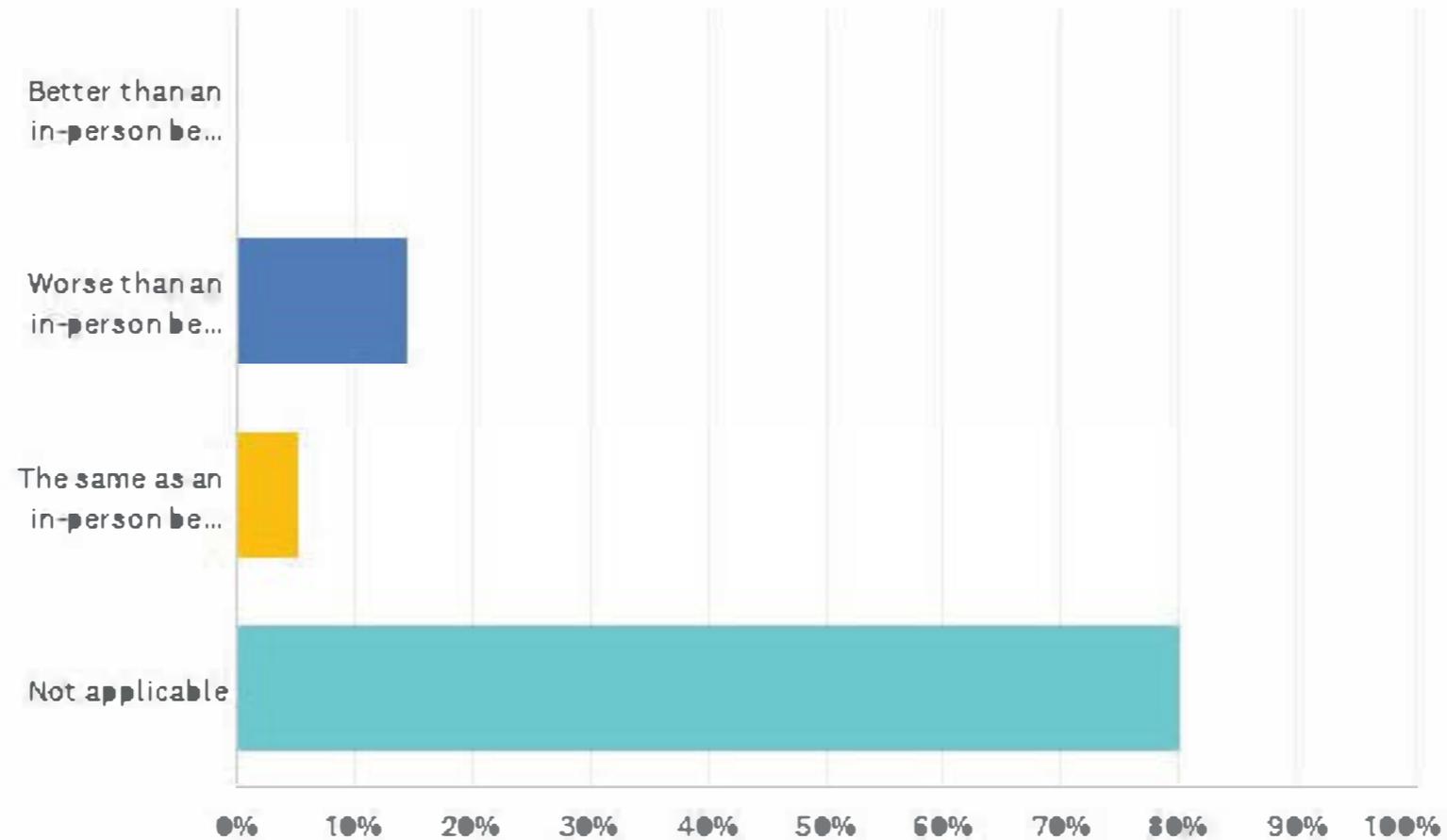
# Q44 Do you believe the court system should continue to incorporate the use of remote technology in the following types of criminal court proceedings even after the end of the COVID-19 pandemic?



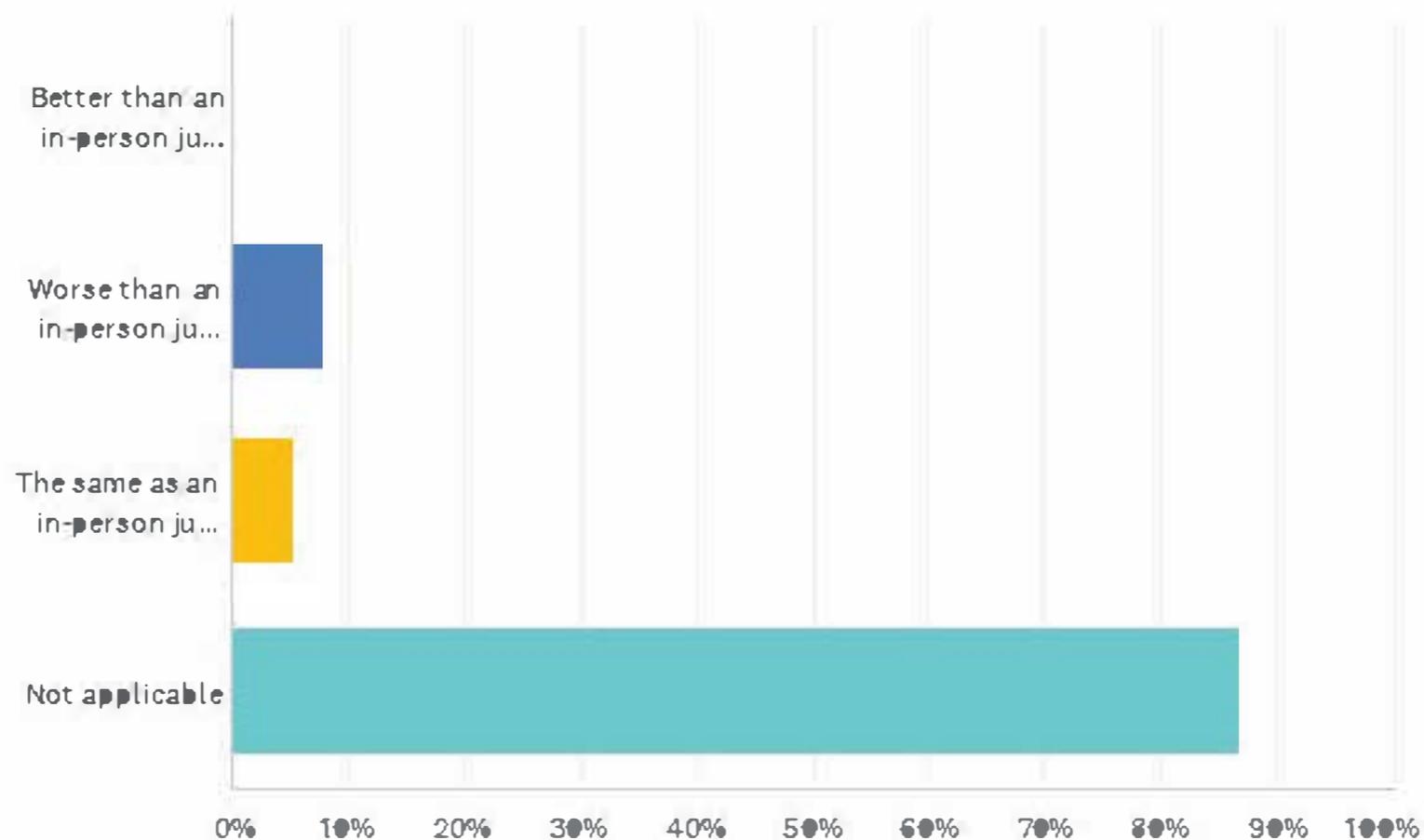
Q45 What difficulties, if any, have you had using remote technology as a part of court proceedings? Check all that apply.



Q46 (If applicable) Having tried bench trial by remote video technology, did you find the overall experience in terms of the client's "access to justice" was:



Q47 (If applicable) Having tried a jury trial by remote video technology, did you find the overall experience in terms of the client's "access to justice"(obtaining access to the courts with minimum barriers including all constitution rights) was:



## Q25 (Optional) Please add any other comments you would like to share regarding your experience with remote video proceedings.

Answered: 150 Skipped: 311

#	RESPONSES	DATE
1	I think hybrid proceedings, where witnesses are "Zoomed" in to appear at trial will help level the playing field for less well funded litigants who can avoid the expense of bringing experts and other out of state witnesses to court to testify. I had one experience with this pre-COVID and now expect it will become more routine as Courts and counsel have become more comfortable with the technology.	12/20/2021 2:16 PM
2	The technology adopted by the Los Angeles by the Los Angeles Superior Court did not work well at first. They have since corrected those issues.	12/20/2021 9:38 AM
3	Most of my experience with virtual hearings has been in an Dept of Labor bench trial, AAA arbitration, and FINRA arbitration, on the defense side. I was quite pleased with the experience. It is easier on lawyers -- avoiding travel and delays -- and cost efficient for clients.	12/20/2021 7:48 AM
4	Most of the electronic work I was involved in were mediations, arbitrations, motions and scheduling.	12/20/2021 7:20 AM
5	I have acted as an arbitrator in five arbitration proceedings conducted by Zoom	12/19/2021 9:09 AM
6	In my opinion, the courts should continue to use remote video for status/case management conferences and hearings on routine discovery issues. However, I believe non-jury and jury trials should occur in person, with appropriate precautions in place. Thank you.	12/19/2021 7:25 AM
7	Even with the extensive use of Zoom and other technologies in this extraordinary time, people still act differently when the cameras are turned on. In our system I believe that is not a good thing.	12/19/2021 5:51 AM
8	The process assists with proceedings leading up to trial - but for depositions and trials, both jury and non-jury it is suboptimal and a poor substitute.	12/18/2021 8:15 PM
9	The technology in our Colorado federal courts is outdated. There is a limit to the number of people who can use the video technology, and the technology prevents impeachment by using another video (e.g., of a deposition). Court should absolutely study the use of remote proceedings as I believe it promotes both justice and public confidence in the courts. With better technology, I think court increase the likelihood of improving both.	12/18/2021 5:52 AM
10	Quality and effectiveness varied greatly case you case.	12/17/2021 9:59 PM
11	I think video proceedings provide a cost effective, efficient way to manage a lot of what courts do. And that we lawyers often over sell or believe in the power of our own presence in person. Part of my perspective here comes from having conducted over 70 Zoom mediations in the past almost two years. I'll leave it at that.	12/17/2021 2:44 PM
12	Remote video proceedings are a blessing and a curse.	12/17/2021 1:58 PM
13	Unfortunately, remote proceedings are here to stay.	12/17/2021 1:20 PM
14	I am now retired so my prior experience with remote video experiences has been very limited.	12/17/2021 12:57 PM
15	The use of remote technology makes it a great deal easier for the live testimony of international and out of state witnesses and avoids the need for the playing of depositions to the Court. The presentation and engagement are much better for the process.	12/17/2021 12:20 PM
16	My only experience with remote in jury trials is the plaintiff expert witness testifying that way, which was to the defense advantage.	12/17/2021 12:15 PM
17	Remote hearings (and depositions) save so much I travel time, especially for attorneys in rural areas.	12/17/2021 12:03 PM

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18	Mostly good but the more complicated the proceeding the less satisfied I have been.	12/17/2021 11:54 AM
19	None, very satisfied.	12/17/2021 10:40 AM
20	Remote video proceedings are good for relatively Monday matter such as a scheduling conference or minor motions. Anything more significant requires in person hearings for the most part.	12/17/2021 10:40 AM
21	Retired and no longer doing trials.	12/17/2021 9:57 AM
22	Remote hearings/proceedings save tremendous time and money. I think I still favor in-person jury trials, but I haven't yet tried a remote jury trial, although we are considering consenting to one in the near future.	12/17/2021 9:23 AM
23	I presided over Board of Professional Conduct hearings where witnesses were called (some remotely, some in a court used by litigants with the panel remote). Openings, closings, and motion arguments occurred remotely as well as all witnesses in most cases. It was doable but not preferred.	12/17/2021 9:10 AM
24	The key to success with a remote non-jury trial and remote depositions is to have a technology assistant or "conciierge" to manage the technology. Unfortunately, this adds expense, but the expense is offset by the saving of time for travel.	12/17/2021 9:07 AM
25	In cases with attorneys from locations far from the courthouse (distant cities or out of state), video proceedings is an excellent way to keep cases moving without undue delay.	12/17/2021 9:06 AM
26	There is no way virtual trials meet constitutional requirements for jury trials.	12/17/2021 8:40 AM
27	Some mediations are better live since that allows more of a connection with parties in some cases.	12/17/2021 8:31 AM
28	I've taken depositions by ZOOM and have been involved in one mediation of a rather involved case, and have been involved in a hearing on discovery dispute (not that complicated) and two hearings on dispositive motions. The problems experienced revolved around the introduction and use of documents in those matters conducted over ZOOM. Also, receipt of testimony, at hearings and depositions was less effective than at live depositions and live court hearings. I feel that would be even more so at a non-jury or jury trial.	12/17/2021 8:13 AM
29	I have been retired since 2016.	12/17/2021 7:51 AM
30	I am a Discovery Master and also have an ADR practice, and am almost 85. I need technical help with all of this but with that help I think remote proceedings are effective and save a lot of time.	12/17/2021 7:44 AM
31	Finished a trial in December 2021 in the Central District of CA. We called two witnesses remotely through zoom. One was in Thailand the other in Texas. The witness in Thailand was critical to the case. No way he could have testified in person. Very glad to have had the remote option for both. And I hope the option is available in the future in the absence of a pandemic.	12/17/2021 7:34 AM
32	Another issue is that trying to train lawyers to conduct court hearings and, more importantly, actual trials, it's very difficult when everything is being done remotely.	12/17/2021 7:31 AM
33	Video depositions of out of state witnesses, including expert witnesses are the biggest benefit that use of remote technology related to the pandemic has brought. The easy availability of platforms like Zoom have dramatically decreased the cost of deposing out of state witnesses. And I have not had difficulty with counsel improperly coaching witnesses.	12/17/2021 7:31 AM
34	Remote video is great for status conferences, some depositions, and some non-dispositive motions. I have tried three non-jury cases during the pandemic as counsel and I have presided over 8 small claims court dockets as a referee. Remote video proceedings for trial or motions requiring the court to refer to documents or take testimony should be done in person. The access to and administration of justice or even the ability for the fact finder to engage with the parties in a meaningful way is lost via remote platforms. Substantive motions and trials that require reference to exhibits and direct and cross examination of witnesses should be in person.	12/17/2021 7:27 AM
35	Although pleased and satisfied with remote non-jury trials, there is a significant disadvantage when cross-examining hostile witnesses, in that they receive the documentary evidence prior to exam and are somewhat protected from face to face confrontation. Also, it is not as easy for the judge to assess physical indications of credibility or lack thereof. But in great scheme	12/17/2021 7:23 AM

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of events, I have come to think that trial lawyers overestimate the importance of these credibility issues and that the efficiency of remote hearings outweighs these disadvantages.

36	I've had no remote experience.	12/17/2021 7:07 AM
37	I have participated in a two-week arbitration hearing and I do not believe that the video proceedings allow the parties to connect with the witnesses and the decision makers to the same extent as you do in person.	12/17/2021 7:07 AM
38	Remote hearings should be available by agreement of the parties or by motion. Voluminous exhibit cases present difficulties in sharing documents.	12/17/2021 7:07 AM
39	When proceedings are remote, you lose a little bit of the feel you need to examine witnesses or see how the court is reacting, but the trade-off is that it saves travel and can be done from anywhere. That's OK for depositions, appeals and ordinary motions, but not for trials and motions in which credibility is critical.	12/17/2021 6:47 AM
40	I am now only acting as mediator. All have been remote on Zoom. I think it works just as well as in person if not better.	12/17/2021 6:43 AM
41	Extremely expensive to do well enough to not impact rights.	12/17/2021 6:19 AM
42	Remote video can be an acceptable substitute for some discovery functions (subject to all lawyers agreement), but it is a poor substitute for in court proceedings.	12/17/2021 6:17 AM
43	Participated in a "non-mandatory" mediation and found it perfectly acceptable.	12/17/2021 6:15 AM
44	Remote works for some matters, but overall in person is far superior.	12/17/2021 6:14 AM
45	I came to motions, depositions and especially remote trials as a skeptic. I think the proceedings - especially the 2 trials - permitted good advocacy and effective direct and cross examination.	12/17/2021 6:09 AM
46	Even after the pandemic ends (it will, right?), there is value in keeping remote video available for all proceedings. As soon as the proceeding involves a witness testifying under oath, however, remote should not be mandatory.	12/17/2021 6:08 AM
47	Participated in an administrative law proceeding with many participants including pro se and lawyers. It was very successful and allowed much access to the pro se and those who wanted to view the proceedings.	12/17/2021 6:04 AM
48	Remote is here to stay and we should advocate continuing to improve it.	12/17/2021 6:00 AM
49	The use of video technology to present a witness should be the choice of the presenting attorney. If that attorney does not wish to present the witness through remote video he or she should not be forced to do so.	12/17/2021 5:57 AM
50	I have been using video conferencing for depositions of fact and expert witnesses well before the pandemic. I found it helpful then, and will continue using video into the future, I'm sure.	12/17/2021 5:36 AM
51	When I said above that remote technology should be available for depositions, I do not mean as a matter of right. It should be allowed by agreement or with leave of court.	12/17/2021 5:30 AM
52	I have found remote arbitrations to be especially effective.	12/17/2021 5:25 AM
53	I have transitioned to a neutral practice as arbitrator and mediator. Mediators now almost uniformly in Florida prefer virtual mediations. I conducted 44 days of virtual arbitration proceedings last year in cases that ranged from simple to complex and find the process improving every day as I do more and the advocates do more. It has brought down the cost and increased the access significantly. I also taught a law school course on advocacy in international disputes that incorporated advocacy in virtual settings because it is now and will continue to be essential.	12/17/2021 5:24 AM
54	Trial is the only activity for which I think remote technology would not work.	12/17/2021 5:19 AM
55	In favor of using remote procedure in minor and/or administrative matters, only.	12/17/2021 5:08 AM
56	As foreperson of a county Grand Jury, I found the use of remote video proceedings to be minimally adequate, at best.	12/17/2021 5:05 AM
57	Virtual/remote depositions and court appearances are different events and in my view a very	12/17/2021 5:03 AM

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poor substitute for in person proceedings.

58	I've done 98 arbitrations and mediations in 2001, all but about 5 were remote using zoom or some similar platform. I think the remote system works well for these matters. Can't say the same with regard to trials, as I have no experience with remote trials.	12/17/2021 4:58 AM
59	My belief, based on remote depositions, is that witnesses — particularly adverse or hostile witnesses, find it easier to lie or dissemble with the barrier of remote video, as opposed to in- person questioning.	12/17/2021 4:45 AM
60	There is an important role for this technology but it should never replace in person meetings, trials and opportunities to communicate with counsel, court and jurors.	12/17/2021 4:43 AM
61	None further	12/17/2021 4:39 AM
62	We have learned that remote hearings can be accomplished with fairness to all and with public acceptance, but we have also learned that it is not ideal and that particular scenarios call for in-person solutions more than other scenarios.	12/17/2021 4:38 AM
63	I tried a 2.5 day virtual non jury trial and I was surprised at how well the process worked.	12/17/2021 4:28 AM
64	None.	12/17/2021 4:19 AM
65	I tried a highly complex 30-day non-jury trial before a specialized court on a fully-virtual basis. The trial went very well and I do not feel that we were in any way prejudiced by conducting the trial virtually. I must emphasize, however, that a very great deal of effort and substantial resources were dedicated to making this happen. The case was tried, for the most part, by four large law firms -- Jenner & Block (my firm), Weil Gotshal, Latham and King & Spaulding. These four firms had access to fairly sophisticated in-house IT departments who were very engaged in making the logistical arrangements. The lawyers gave a lot of thought to how to make this work in terms of issues such as putting documents in front of the witnesses, adding documents at the last minute for cross examination without revealing them in advance, etc. Each of the parties had arranged for multiple video screens in order to simultaneously project the Judges, the witness, and the examining attorney. The Judges, too, gave a lot of thought to how to make this work. In short, this complicated trial worked very well but only because the parties and the Judges devoted so many resources to make it so. And although it all worked fairly well, I would not want to do this for a jury trial.	12/16/2021 6:25 PM
66	Meditations that only involve money are more adaptable to remote proceedings than those with other issues. Critical depositions, especially if contentious, are not well-suited to remote proceedings.	12/16/2021 12:11 PM
67	My practice is circuit civil mediation. After everyone adjusted to doing these via Zoom platform, it has been an effective and efficient method for conducting them with no discernible impact on the rate of resolution.	12/15/2021 8:38 AM
68	My preference is always to participate in proceedings live. Remote video is ok for routine status conferences, case management conferences etc. but to me is a poor substitute for live proceedings. I have spoken to some judges, however, who are sold on remote video for oral arguments, hearings on motions and non-jury trials so I think it behooves all of us to accept that remote video is here to stay and work on becoming effective advocates within that framework.	12/14/2021 12:59 PM
69	Remote video is a tool, like many others we use in our practices. It is well-suited to some uses, e.g., relatively straightforward hearings and proceedings, but not to others, e.g., jury trials, where "being there" is most important. One thing is clear, though: remote video proceedings are here to stay, so trial lawyers are best served by adding them to their skill set and knowing when and how best to use this particular tool.	12/14/2021 9:28 AM
70	I have had more experience with use of remote video for discovery examinations (depositions) and for arbitration hearings, including in a complex construction dispute, all of which can be managed satisfactorily with the right technology and preparation.	12/14/2021 7:15 AM
71	Remote video proceedings do provide easy access to justice and the convenience and reduction in costs is measurable, but in my view it does not provide counsel with the same feel of the courtroom nor does it give the participants the same confidence in the process, as if they experienced it live.	12/13/2021 1:13 PM
72	Advocacy suffers. Expert depositions adversely affected.	12/13/2021 12:02 PM

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73	Video proceedings work well to the extent the participants do not need to interact too much with exhibits and everyone is engaged. I think one of the problems with remote mediations is it is too easy for parties to mail it in. If everyone has to fly to a location and meet for a day, the engagement is much more on all sides. Although I have not had a jury trial by video, I can see the same problem for the jurors. It makes it too easy for them to disengage and the seriousness of being in a court room live with a Judge is not there. Also, it is much easier to become distracted.	12/13/2021 11:52 AM
74	Most case management hearings and minor motions hearings as well as depositions and hearings by consent are well suited to remote video proceedings. Some mediations are also well suited for remote video proceedings.	12/13/2021 11:43 AM
75	Remote video proceedings are best reserved for matters where the court does not have to determine witness credibility or where complex legal arguments are being addressed.	12/13/2021 9:34 AM
76	In civil cases, the savings in terms of travel and the like is so great that, in my opinion, it will not be long before clients insist on a justification for in person depositions and non-jury hearings before agreeing to them. (This might not be the case for purely local proceedings.)	12/13/2021 9:05 AM
77	For ADR I have found if the parties want to get something done it is effective to use the virtual platform. I have only had one occasion where a party would have benefitted by not being able to talk personally as he did at the computer.	12/13/2021 8:49 AM
78	I think that in many cases remote technology can be a cost effective alternative where the witness may be a great distance away or even to permit participation in an argument rather than travelling to the courthouse where distance is involved.	12/13/2021 8:33 AM
79	The biggest gain is in discovery depositions w/ lots of documents, particularly those in other states or countries-huge savings in time, money and travel. Court proceeding (limited experience) for bench trial worked, but don't think is consistent because of vast differences in judges and trial is trial for client- this is particularly disconcerting for access to justice clients.	12/13/2021 8:18 AM
80	Covid has driven this, and it did so quickly to my chagrin really. There is just nothing like boots on the ground for substantive proceedings. Really another reason why I am walking away from trial practice.	12/13/2021 5:56 AM
81	I think remote video is useful in certain situations on a case by case and issue by issue basis. Key depositions and motions should still be conducted in person. Remote settlement conferences with the Court have not been useful. Complicated motions are better presented in person.	12/13/2021 4:09 AM
82	I think that video is a good option, and has many benefits, though there are many instances where even when it is a good option, I would have a strong preference for in-person. So even when available, I think parties should have the option to opt-out, and if either party prefers in person, that should be honored.	12/12/2021 2:21 PM
83	Strongly support administrative functions of court be done by remote technology and strongly believe trials should not be conducted in that fashion.	12/11/2021 3:47 PM
84	The significance of the proceeding is an important driver of the use of remote video. A party should be able to attend live for those matters they reasonably contend a live presentation is necessary. Likewise, parties should be able to agree to attend by video on routine matters.	12/11/2021 2:24 PM
85	In light of the danger, remote technology was necessary, but in spite of herculean efforts by court staff, it is not a substitute for in person proceedings if the matter is contested.	12/11/2021 2:19 PM
86	I tried a lengthy arbitration on video and it was a satisfactory experience.	12/11/2021 12:27 PM
87	Video has worked very well for smaller, shorter matters that are heard at a geographically distant location.	12/11/2021 10:22 AM
88	The experience has been generally good, but for important motions and trials I still think in person is much better.	12/11/2021 9:54 AM
89	Retired before remote was established.	12/11/2021 7:59 AM
90	A hybrid in which a client, whether due to distance, age, or infirmity can attend remotely, while the hearing is held in-person, is very useful.	12/11/2021 7:46 AM
91	My concern about remote video proceedings revolves around the inability to assess all of the	12/11/2021 6:33 AM

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participants level of engagement. When in court, it's easy to assess how engaged the various participant are. With remote video it's impossible to have the same level of confidence about how engaged a participant is, even if they are on camera.

92	I believe we have learned to manage legal affairs from afar and to retreat back to mandatory in person appearances would be an error. We have seen the economies of remote dispositions and must continue the trend. Technology and economy requires this growth.	12/11/2021 5:56 AM
93	The quality of these proceedings were significantly varied depending upon the judge, however, they were generally impersonal with lessened chance to advocate for client.	12/11/2021 5:44 AM
94	I think that selective use of video technology should remain after COVID. For example, witnesses who live in other states and case management conferences that last about 30 minutes. I think in-person is better for final trials, jury and non-jury, and appellate arguments.	12/11/2021 4:26 AM
95	Thanks for working on this. Remote depositions are becoming common and they are awful. It is hard to imagine how terrible a trial will be.	12/11/2021 4:11 AM
96	I regularly teach trial advocacy skills in NITA programs, frequently with state and local judges as co-faculty. While remote proceedings became necessary because of the COVID crisis, it is clear that many courts are considering adopting their use on a broader scale, perceiving them as more convenient. That will be a mistake. They should be regarded as a necessary evil. Even with fairly sophisticated video technology, these remote proceedings deprive the advocates of the sensory observations and insights only present in the in-person courtroom. With cameras all too often focused only on the face, you lose the ability to read the witness by observing body movements, lose the opportunity to adequately assess jury reaction, and non- verbal trial tools are diminished. Trial lawyers across the land should be doing whatever we can to promote a return to in-person proceedings whenever possible.	12/10/2021 8:53 PM
97	I tried one non-jury case using a combination of live and remote witnesses. It worked out well.	12/10/2021 4:55 PM
98	I have selected one jury by using fully remote video technology and found that while it was not as engaging as in person voir dire, it was a necessary compromise to be able to speak with a large number of people in a safe and distant environment.	12/10/2021 4:15 PM
99	Before remote video technology young lawyers would sit in the court room and watch more experienced lawyers practice law, interact with litigants, opposing lawyers, the Judge, the bailiff, the court reporter, etc. They would be inadvertently mentored. You could go up and talk to a lawyer about a case or why they handled an issue a particular way. There was collegiality. You got to know other lawyers. That is all gone with remote hearings. No one sees a good lawyer or a bad lawyer. All you see is yourself and the opposing lawyer. With remote appearances lawyers sometimes don't even wear a coat or tie or other appropriate attire. Remote anything will have adverse impact on the quality of lawyers in the years to come.	12/10/2021 3:59 PM
100	I found that the courts that used Zoom that the technology worked better than the courts that used WebEx.	12/10/2021 2:45 PM
101	I have personally tried to avoid these kind of proceedings because I believe strongly in the importance of being personally present and involved.	12/10/2021 2:07 PM
102	I'd encourage consideration of remote video for more than just mandatory mediation, it's cost effective.	12/10/2021 1:38 PM
103	Texas has a report from a task force that looked at remote proceedings. I will see if I can get a copy of the report and send it to the College office.	12/10/2021 1:10 PM
104	Say I have a hearing at ten am. I leave my office at 9. I wait in the courtroom with the 30 other lawyers for my case to be called. My case takes ten minutes to argue. I get back to my office at noon. I bill my client 3 hours for a ten minute argument. Zoom hearing is set for 11:45. I dial in at 11:40. Judge gets to me at noon. Hearing takes ten minutes. I hang up. I bill my client 30 minutes. It is totally irresponsible to advocate going back the tradition methods because of some concern about dignity or administration of justice. Zoom is the biggest cost saver in history for clients. We need to embrace it.	12/10/2021 1:10 PM
105	The Zoom jury trial I did increased my client's access to justice because--if we had not proceeded in that manner--she'd still be waiting years longer for her trial.	12/10/2021 1:08 PM
106	In a Medical Malpractice Jury trial in federal court, in Hawaii, the trial judge, during trial, permitted a video tape depo of a California treating physician regarding causation, necessity	12/10/2021 12:56 PM

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and reasonableness of billing. The video allowed the Jury to evaluate credibility and make an informed decision. The trial judge's ruling took into account that we had limited discovery voluntarily based upon the judge's efforts to settle the case.

107	In high profile issues, particularly civil rights and issues of pandemic interest, the availability of remote proceedings has exponentially expanded access by the public to court proceedings, to the good.	12/10/2021 12:54 PM
108	My experience with the use of remote video conferencing for mediations, regardless of whether I was an advocate for a party or serving as the mediator, has been excellent. I fully anticipate that this technology will be utilized regularly in mediations long after the pandemic ends.	12/10/2021 12:27 PM
109	What you did not ask was how much money was saved. Remote trial was also less stressful. You can call me and I will give you my thoughts on this if you want them.	12/10/2021 12:17 PM
110	Conducting a jury trial in its entirety by remote proceedings is a terrible idea.	12/10/2021 12:14 PM
111	Except for purely administrative matters, or unless all parties agree to appear remotely, proceedings should be held in court, with all counsel and necessary participants appearing in person.	12/10/2021 12:08 PM
112	Bench trials were short as in limited issue Juvenile Court dependency cases.	12/10/2021 11:59 AM
113	My perspective is different -- I was a state trial court judge until 4/30/21 and have returned to an ADR practice. All my remote video experience is as a judge, mediator, arbitrator, or special master. I am a huge fan of remote video because, as a neutral, I felt I lost nothing significant compared to an in-person session on motion arguments or case conferences. In a complicated, two-week med mal jury trial in March 2021 (I was the judge), half of the 12-15 witnesses appeared by Zoom or the like and I was astonished at how effective that testimony was. Screen sharing allowed a witness to show the jury what part of the document he or she was talking about. We had an 8x10 foot screen so the visibility of the witness was better than if s/he had been live because we could see every facial expression.	12/10/2021 11:55 AM
114	This questionnaire should be modified to include questions regarding the conduct of remote or partially remote arbitrations.	12/10/2021 11:40 AM
115	My county pivoted early to Zoom proceedings, with very good success. Jurors prefer it, it's much easier to schedule experts, and while there are some negatives, on balance it has been quite positive, especially as people have grown more comfortable with the technology.	12/10/2021 11:40 AM
116	I don't like them.	12/10/2021 11:39 AM
117	Based on my personal experience, most matters in civil litigation can be conducted with high quality OTHER than an entirely remote jury trial.	12/10/2021 11:28 AM
118	We settled an MDL proceeding through 21 separate zoom sessions. It worked very well.	12/10/2021 11:13 AM
119	In many instances the use of video is more efficient. It cuts travel time completely.	12/10/2021 11:06 AM
120	While convenience to attorneys, litigants and witnesses is available in remote hearings, in-person proceedings provide a number of benefits, not available. Face to face, credibility is more easily judged than in a remote hearing. To me that is all the reason to keep in-person proceedings.	12/10/2021 11:01 AM
121	I think they work fine for routine conferences and motion hearings. I would not want to present trial testimony or cross-examine a witness over video. I think the technology impedes our ability to control a witness on cross, to judge credibility and body language and to generate drama in the proceedings.	12/10/2021 11:01 AM
122	I think this is another tool to advance litigation in an economical manner. It is not as good as in person but it should be considered on case by case basis, with fairness, timeliness and accessibility factoring into the decision	12/10/2021 10:58 AM
123	none	12/10/2021 10:51 AM
124	In court jury trial with several remote witnesses for both sides. Many technical glitches. Witnesses unable to establish jury rapport. Jury unable to judge overall credibility of witnesses.	12/10/2021 10:50 AM
125	I conducted a 23-day bar discipline hearing remotely, as a special hearing officer. The hearing went as smoothly as an in-person hearing would have been conducted. And because all	12/10/2021 10:43 AM

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counsel were working from their offices, as was I, there was an enormous savings in terms of efficiency ..... no time spent getting to the hearing, and there is time in the office before and after each hearing. This is much better for the lawyers involved, and saves travel expense and time for clients and witnesses (no dead time). That said, the issue of whether court hearings should be conducted remotely is up to judges, but I would hope that they would recognize the efficiency of holding hearings remotely in many instances.

126	I guess I don't like it, but this technology is here to stay. Judges like it and it can be time saver. We lose the atmosphere of traditional court proceedings, however.	12/10/2021 10:42 AM
127	I support incorporating video conferencing in many circumstances as it reduces cost and burden on litigants without much loss of quality. I am not in favor of jury trials being conducted remotely, as I think the interpersonal aspects of a jury trial are too seriously compromised.	12/10/2021 10:40 AM
128	Too easy for a witness to escape being caught.	12/10/2021 10:39 AM
129	We do a lot of mediations. In person mediations seem to get better results than with Zoom. It is preferable to get all decision makers together in person.	12/10/2021 10:39 AM
130	The use of Zoom and the like have greatly increased the convenience and reduced the cost of practicing law. The downside is the lack of collegiality and opportunity to compare notes with colleagues in the courthouse, both by lawyers and judges. On balance, however, the good of Zooming far outweighs the negative.	12/10/2021 10:39 AM
131	While video communications are sometimes necessary, my view is that open door person-to- person hearings of witnesses and arguments are much better and should be preserved to the extent possible.	12/10/2021 10:39 AM
132	I defended on behalf of a nursing home a very complicated, multi-party elder abuse civil trial via Zoom for more than 5 months. The case was venued in Alameda County, CA and was tried in phases with the jury phase lasting approximately 3 months and the non-jury portions approximately 2 months. The case was fast-tracked due to the age of the plaintiffs such that all substantive discovery, hearings, motions, pre-trial proceedings as well as all aspects of trial were conducted in 2020 via zoom. We are now in the post trial motion phase of the case. There have been no in person proceedings thus far. Our jurors all participated in the trial from their homes. The court had an attendant who was responsible for monitoring the jury to assure (as much as possible) that the jurors were remaining "attentive". We had no in person, face-to- face contact jurors at any time which I felt was a tremendous detriment to the "administration of justice". Happy to share more if you care to reach out. My cell number is <span style="background-color: black; color: white;">951-323-2594</span>	12/10/2021 10:38 AM
133	Am a retired judge...but have done numerous mediations in person, but with precautionary measures. Retired colleagues have done many in video and have appreciated...I prefer with the people...much better contact!	12/10/2021 10:37 AM
134	For routine items, the remote technology is more than sufficient and a real time-saver. But something is lost on witnesses exams and, I believe, arguments to a jury.	12/10/2021 10:35 AM
135	None	12/10/2021 10:33 AM
136	I am a retired superior court judge. I began sitting on arbitrations before Covid in 2018. Did many arbitration hearings and mediations remotely since Covid. My perspective is as an arbitrator or mediator, not counsel.	12/10/2021 10:33 AM
137	Mediations and hearings without evidence (argument only) have worked really well. On the hearings, I think evidence v. no-evidence is the critical distinction and not the type of hearing. So, appellate arguments, discovery motions, even dispositive motions are well-suited to remote video. Depositions also have worked well, but depends on the importance or type of witness, potential for coaching, and how document heavy the deposition is. Overall, should have the effect of reducing cost to clients (e.g. eliminating travel) and promoting efficiency (easier scheduling).	12/10/2021 10:33 AM
138	I think remote proceedings are great for certain conferences and motion hearings. I strongly oppose remote jury proceedings of any kind or remote proceedings for complex or dispositive hearings.	12/10/2021 10:32 AM
139	Biggest problems with remote video proceedings has been inability of COURT to maintain connection, video, audio. Would be good if they all had tech people in the courtroom.	12/10/2021 10:29 AM
140	Have also had remote video Probate Court hearings. The primary difficulty with all remote	12/10/2021 10:29 AM

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proceedings is excessive delay and trivialization of justice system.

141	It has been better than I expected, and I cannot say for sure that it changed the outcome, but generally speaking I think in-person appearances are preferable for the lawyers and the court.	12/10/2021 10:28 AM
142	I like the option for a trial witness who is out of state or out of country to testify remotely, rather than by reading a cold transcript. Other than this exception, trial should be in person.	12/10/2021 10:28 AM
143	Removal of face to face interaction from the litigation process likely will lower the quality of justice administered over time.	12/10/2021 10:24 AM
144	Judges have become over impressed with video use.	12/10/2021 10:24 AM
145	Remote proceedings very beneficial. Save time Deposition use very beneficial.	12/10/2021 10:23 AM
146	I think that use of remote technology for some depositions and court proceedings is the way to go. I hate traveling across the country for a 15 minute hearing. For many pretrial matters, a quick zoom call works fine. I tried a whole international arbitration via zoom and do not want to do that again. I do think in person trials are important. However, for short witnesses, I think linking them in works fine in bench trials.	12/10/2021 10:22 AM
147	I believe that continued use of virtual proceedings should be limited. It is vital that participants in the justice system (including clients) be able to attend in court and witness/be a part of proceedings in order to foster confidence in our system. Where appropriate, this can be modified by use of hybrid proceedings.	12/10/2021 10:21 AM
148	No jury trial should ever be conducted by video. Video does not allow the jury to adequately view the whole witness and would fully impede the ability of counsel to develop and maintain any type of relationship with the jury.	12/10/2021 10:18 AM
149	This is an excellent option that creates efficiencies that we did not have before. It makes it easier and less expensive for clients who do not have to travel to a courthouse or a mediation. It saves time for lawyers who no longer have to travel to court for everything. It should be with us for good. Access to justice has a lot to do with speed, efficiency and expense. Remote proceedings provide all three. It's no nearly as much fun for the lawyers, but that should not be the determining factor. Cases should no longer be continued due to the unavailability of an out of state expert or other witness. These witnesses should testify by Zoom. Status conferences and such minor matters should always be conducted by Zoom. My fully remote trial was no fun for me but it was much better for my client, a single parent, since he could participate without taking as much time away which would have required a babysitter, he did not have to drive to court, find and pay for parking, and it was better overall for many who could watch the entire trial without traveling including the three to five lawyers for the federal department who were overseeing the trial.	12/10/2021 10:10 AM
150	Remote proceedings is here to stay. Other than jury trials it is nearly equivalent to in person proceedings, and it is cheaper, more efficient, and more convenient. In mediation it is superior as it better at filtering out unproductive emotional elements.	12/10/2021 10:09 AM

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