

Trusting Your Virtual Mediator: It May be Easier than You Think

By

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As we experience challenging times due to the COVID-19 pandemic, we are all learning how to work and interact with each other in new ways. Although many courts are closed except for emergency matters, most law firms are still open and lawyers continue to work to represent their clients' interests to the fullest extent practicable. When the courts begin to reopen, priority will be given to criminal matters; therefore, it is incumbent on lawyers to represent their civil clients as completely and expeditiously as possible.

The good news is that many civil matters can be resolved in mediation using online platforms. The better news is that a recent study shows that videoconferencing platforms enable parties to communicate and trust others to essentially the same extent as a face-to-face encounter.

The ability to trust a mediator is critical to one's ability to develop rapport. If the participants find a mediator to be trustworthy, they will trust the mediator enough to be candid, sharing valuable information that a mediator may use to uncover underlying motivations and interests and foster an amicable resolution.

A recent empirical research study shows that within the context of a mediation simulation conducted as part of online dispute resolution (ODR), mediation participants trusted their mediator to virtually the same degree whether they engaged in face-to-face mediation or virtually using a video-collaborated environment known as telepresence. Data was analyzed from a small-scale experimental study (N=59), and the research study concluded that there was no statistically significant difference in the extent to which participants trusted a mediator in all contexts and factors—communication mode (face-to-face or telepresence); age; gender; educational level; familiarity with and use of a video-collaborated environment such as Skype,

Face Time or a similar platform; and an individual's predisposition to trust. Similar results applied to perceptions of the mediator's trustworthiness.

Trust and Trustworthiness

Interpersonal trust is a social concept because it relies on human interaction; it involves an individual's reliance on another to fulfill a promise. Because the trustor lacks control over his counterpart, he becomes vulnerable by assuming a risk that his counterpart will fulfill a promised action or duty. Feelings of trust are affected by perceptions of satisfaction or attraction, interpersonal visual cues such as smiling, and the trustee's ability, integrity, and benevolence. Reputation and past experiences also influence feelings of trust.

Whereas trust signifies the trustor's willingness to rely on another, trustworthiness includes a set of beliefs about the trustee that precedes the trustor's willingness. Trustworthiness, therefore, is a precursor to trust and is characterized by one's capability (level of competence), benevolence (ability to do good for another), and integrity (capacity to imply morality and credibility).

Telepresence and Videoconferencing

Telepresence is the extent to which one feels present by means of a communication platform rather than location in an immediate physical environment. Highly sensitive microphones and special cameras that automatically zoom in and pan the room, generating vivid and interactive dimensions, enhance this sense of presence. A telepresence platform helps participants track the flow of a conversation better than videoconferencing because the cameras allow participants to have direct eye contact since they do not have to look into a computer-mounted camera as with videoconferencing.

Many mediators are now using Zoom platforms to mediate disputes. Inasmuch as Zoom limits visual communications to one's upper torso, it still enables participants to see facial expressions and gauge the tone and pitch

of speech. Participants, therefore, feel verbal and social cues happening real time, yielding a good communication flow akin to an in-person experience.

The Empirical Research Study

The purpose of the research study was to examine the extent to which parties trusted a mediator when communicating by telepresence. Students volunteered as disputants in a simulated mediation. In each simulation, one disputant interacted with the mediator in a face-to-face context and the other disputant communicated with the mediator via telepresence.

The measures of main variables were based on two separate questionnaires. Prior to the mediation simulation, participants participated in a survey of questions to test their predisposition to trust others based on Julian Rotter's scale for the measurement of interpersonal trust. After the simulation, participants answered twenty-four survey questions based on research regarding trust and trustworthiness. Among the post-mediation questions, two direct outcome measures were examined: trust in the mediator and trustworthiness of the mediator. Thus, some questions related to the participant's personal interaction with the mediator and others related to their personal perceptions about the mediator. In addition to the mode of communication, other variables that were measured included gender, age, educational attainment, and frequency of involvement with video collaborated communications such as Skype, Face Time or a similar platform.

Of the 59 recorded survey responses, 50 participants indicated that they strongly agreed with statements that "I could trust the mediator" and "The mediator was trustworthy," whereas 9 participants mildly agreed with each statement. Whether participants communicated with the mediator through telepresence or face-to-face, they were equally likely to trust the mediator and perceive the mediator as trustworthy. The final result is particularly noteworthy since almost two-thirds of the participants showed a predisposition to distrust rather than trust prior

to engaging in the mediation simulation. A detailed explanation of the factors that affect the *degree* of trust and trustworthiness as well as a detailed analysis can be found in a law review article referenced below.

Conclusion

The findings are consistent with earlier research that illustrates the richness of an electronic communication medium may stimulate levels of trust and perceptions of trustworthiness similarly to a face-to-face environment. These findings are significant as our world becomes smaller, forcing disputants in distant locations to find efficient, economical forms of ODR.

Your CAMS panelists are not only experienced mediators and ADR professionals, they have expertise in ODR and currently offer their services over Zoom and other electronic platforms.

This article is a summary of a more extensive law review article: Susan Nauss Exon and Soomi Lee, *Building Trust Online: The Realities of Telepresence for Mediators Engaged in Online Dispute Resolution*, 49 STETSON LAW REVIEW 109 (2019).

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May 13, 2020