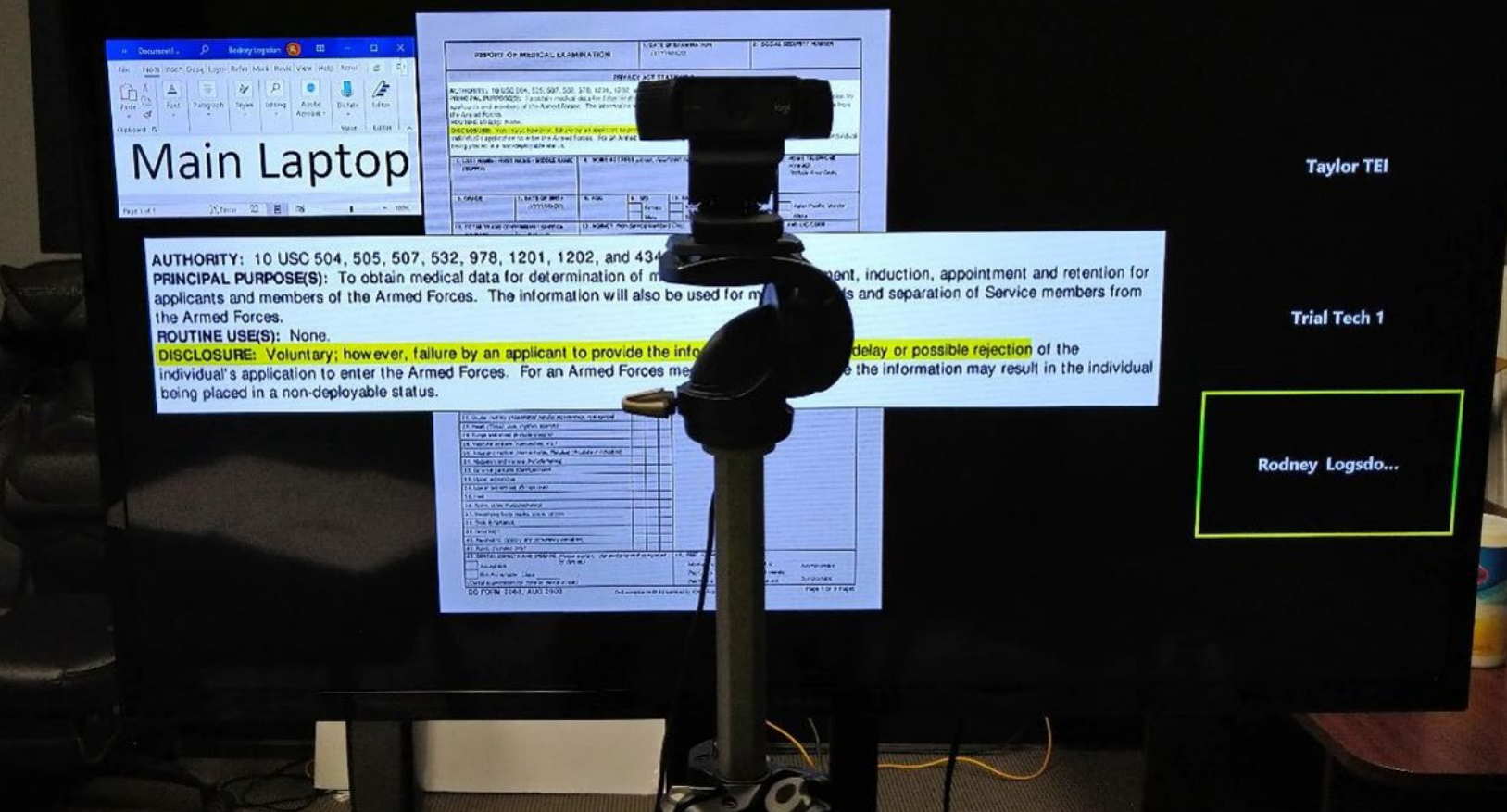


# THE ONLINE COURTROOM AND THE FUTURE OF JURY TRIALS

**Richard Gabriel**

Founder—The Online Courtroom Project





**Our justice system was invented in 1791.** Our founders, using the Magna Carta and the English common law system, literally *made up* our criminal and civil justice systems. Ever since then, new laws, new statutes, and new procedures are debated, disputed, ruled on, and implemented in our courts. The justice system is designed to resolve disputes, both banal and unique, and over the years the courts have implemented new procedures and routinely decided cases of first impression.

Those of us who spend our time in the justice system rely heavily on precedent, but we live in unprecedented times. The coronavirus, the economy, our divisive politics, and the social justice movement have created a national crisis challenging the way we interact socially, the way we conduct business, the way we shop, the way our government works, and the way we teach children and take care of patients. It has challenged us to think differently about the most basic activities in our lives.

In the midst of this crisis, extraordinary innovation has also flourished. While it usually takes years to develop

a normal vaccine, researchers have developed five viable COVID-19 vaccines in less than a year, due mainly to worldwide collaboration between scientists. They are not our only innovators; teachers have created interactive lessons to keep their students engaged in remote classrooms and telemedicine has skyrocketed, allowing routine medical appointments to be conducted online.

As the courts shut down last year, I wrote an article in late March about how jury trials could be conducted online. In April, I formed a working group of retired judges, lawyers, trial consultants, and technologists



called the Online Courtroom Project (“OCP”) to study the efficacy of online courtroom procedures. In June, we conducted a two day fully online demonstration jury trial in an exemplar civil “slip and fall” case, incorporating jury questionnaires, voir dire, opening statements, direct and cross examination, sidebars, closing arguments, jury instructions, and deliberations. Afterward, we produced an extensive report on our findings and recommendations. [https://6a1ab614-8a16-459a-b02b-6cb58b4e4148.filesusr.com/ugd/850355\\_1977b7d61f524fa3b67ea7e992168253.pdf?index=true](https://6a1ab614-8a16-459a-b02b-6cb58b4e4148.filesusr.com/ugd/850355_1977b7d61f524fa3b67ea7e992168253.pdf?index=true)

In the ensuing months, courts in Arizona, California, Florida, Texas, and Washington experimented with various forms of online trial procedures. The National Center for State Courts and the Civil Jury Project at NYU conducted research, and the National Institute for Trial Advocacy conducted courses in online advocacy skills.

In November, the Online Courtroom Project collaborated with NITA to conduct a two-day summit entitled “COVID, The Courts, and the Future of the Jury Trial” (<https://www.nita.org/summit-about>). Judges, court administrators, attorneys, trial consultants, technology and graphics experts provided practical tips for courts and counsel considering or conducting online courtroom procedures. This summit was conducted in partnership with the National Judicial College, ABOTA, the Civil Jury Project at NYU, the International Academy of Trial Lawyers, the American Inns of Courts, IAALS, the American Society of Trial Consultants, Professional Development Consortium, Lawyers Club of San Diego and Women Owned Law.

Since then, a number of states—and some federal courts—have implemented online trial procedures:

<b>Arizona</b>	<b>Nevada</b>	<b>Massachusetts</b>
<b>Minnesota</b>	<b>Florida</b>	<b>Washington</b>
<b>California</b>	<b>Rhode Island</b>	<b>Michigan</b>
<b>New Jersey</b>	<b>Illinois</b>	<b>Wisconsin</b>
<b>Federal Courts</b>	<b>Texas</b>	

In Broward County, Florida, the chief judge of the 17th Circuit conducted and participated in an online jury selection. At the conclusion, he stated, “There is no doubt in my mind jury trials can be conducted via a video platform.”

Despite mainly favorable feedback on the procedural smoothness of online trial practices, at the end of the initial lockdown, most state and federal courts



implemented procedures for “socially distanced” in-person trials. Despite their precautions, most courts had to postpone or cancel their in-court proceedings because of virus surges, with some judges, court personnel, and jurors having been infected with the coronavirus.

What follows is a series of practical tips and generalized best practices that the Online Courtroom Project has learned in the past ten months from judges, attorneys, court administrators, consultants, and researchers. We have endeavored to condense these recommendations into a series of the most common and usable practices.

Tradition is comforting. It establishes guidelines, procedures, and routines for conducting our professional and personal lives. But it is important to distinguish tradition from habit. Habit is also comforting, but it makes us resist new ideas and innovations that can actually improve the way we conduct court business and deliver justice. The challenge for anyone reading this paper is the

same challenge we give jurors: to set aside any preconceived beliefs that they may have about trials, to be fair and impartial, and to keep an open mind.

## Practical Tips and Best Practices for Online Courtrooms

The goal of this white paper is to assist courts and counsel to better understand online courtroom procedures and to implement best online practices, ensuring that clients are fully and fairly represented in their litigated matters, that attorneys have the resources and skills to fully and fairly represent their clients, that jurors are able to fully and fairly understand and decide cases, and that courts may fully and fairly administer procedural justice. This paper will discuss how online courtroom procedures can also make litigation more efficient and effective, as well as create greater access to our justice system for a wider population.



## Concerns and Misconceptions

In the last year, we have heard numerous concerns from judges and attorneys about the viability of online trials procedures. Here is a list of most of those concerns and our findings from research and discussion with online trial participants.

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### CONCERNS

“I won’t be able to see and hear jurors in voir dire to effectively pick a jury.”

“I won’t be able to judge the body language of jurors.”

“The jurors will not be able to judge witness credibility.”

### FINDINGS

In online proceedings, most of the participants’ faces and upper bodies are on screen. If properly lit and positioned, attorneys, judges, and jurors should actually have a much clearer view of each other’s nonverbal behavior, as we communicate most of our nonverbal signals primarily through facial expression and upper body gesture. In truth, most people are quite poor at interpreting body language, and court participants are no exception. When jurors, attorneys, and witnesses are masked in in-person proceedings, the ability to assess body language and credibility is severely inhibited. Online allows for a direct view of multiple people at once, which is often better than a profile view to and from the jury box.

### CONCERNS

“The jurors will be distracted and not pay attention.”

“The jurors will inappropriately research case issues because they will be viewing the trial online.”

“Jurors will not take a court case as seriously as when they are in court. It will lose the solemnity and weight that an in court proceeding conveys.”

### FINDINGS

Anyone who works routinely with jurors knows that the oath they take, the case they hear, and the task of making an important decision with eleven other strangers is the reason that jurors (who initially may not want to serve) take their jobs so seriously. It is the process and not the place. If jurors are properly instructed, a trial is well paced, and cases are well presented, jurors can and will pay attention and follow judicial instructions as they would in person. The weight and authority of a courtroom setting can actually inhibit juror candor and participation in a trial.

### CONCERNS

“I will lose the in-person connection that I normally have in a jury trial and thus, may lose my persuasive edge.”

“The jurors will lose empathy if they are not present in the courtroom.”

### FINDINGS

Connection and empathy in online forums are conveyed differently than at in-person proceedings. Jurors will always seek out the emotional content of a case, whether judging the character and credibility of the witnesses and attorneys, or the fundamental story of the case. With proper training and practice, attorneys and witnesses can still create rapport with jurors and communicate the essential emotional components

of their cases. Attorneys typically overestimate their ability to connect with jurors.

## CONCERN

“Jurors in lower socio-economic groups will be under-represented because they will not have the ability to connect to the court.”

## FINDINGS

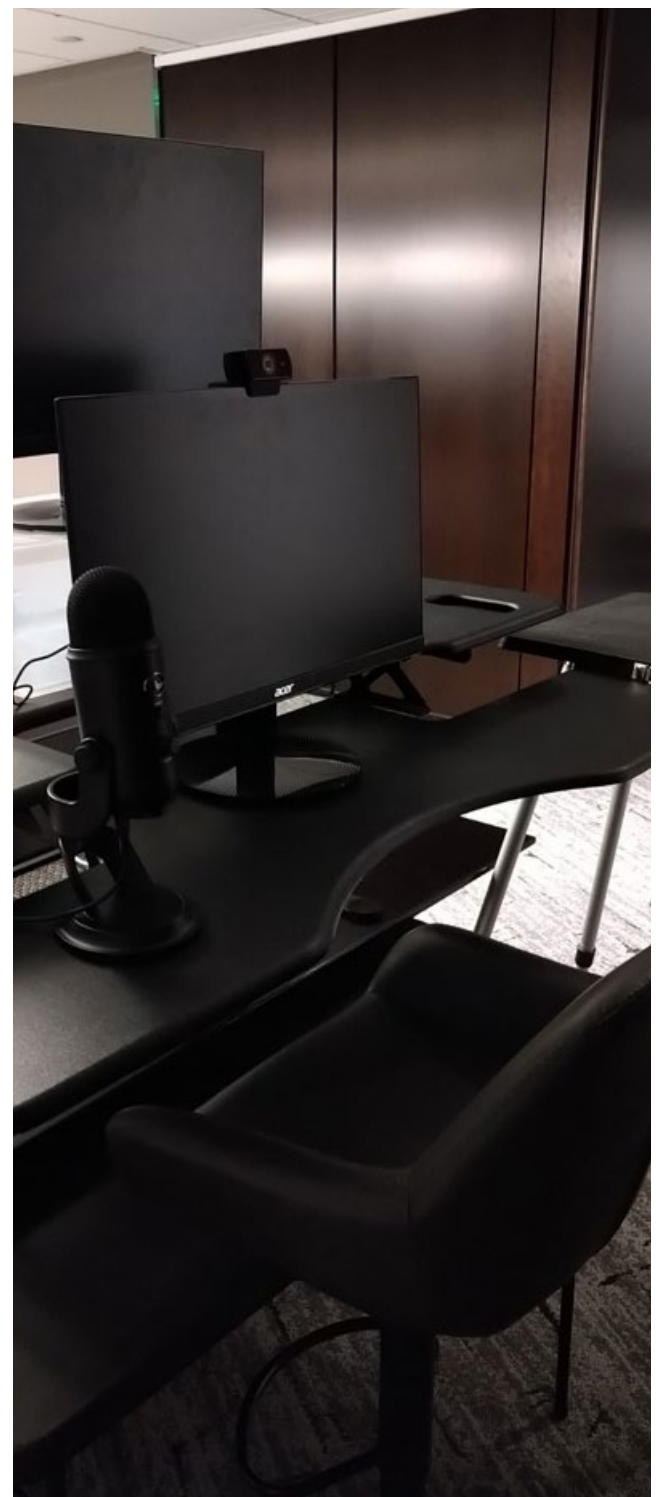
Approximately 90% of the United States population has a computer, tablet, or smart phone and 80% of the population has access to a broadband connection.<sup>1</sup> Prospective jurors who lack access to a device or internet can be provided with devices by the courts or the parties in civil litigation; locations where they have a consistent internet connection can also be arranged. Reports show that online court proceedings can actually increase jury participation and representation because those who do not have transportation, or have to care for children or the elderly, have more flexibility in serving.

## CONCERN

“Online trial proceedings do not satisfy the confrontation clause in the 6th Amendment and make it difficult for attorneys to meet with incarcerated clients.”

## FINDINGS

This issue has not yet been resolved. Most courts have been reluctant to tackle this difficult issue. But only Colorado and Illinois explicitly require in-person proceedings in criminal matters. The ability of counsel to meet and prepare with their clients in a secure remote location is the most logistically difficult problem. Many courts have ruled that video does satisfy the confrontation requirement and realistically, both the accuser and the defendant are both present and able to see each during a criminal trial, therefore the defendant is able to confront their accuser.



<sup>1</sup> <https://www.census.gov/content/dam/Census/library/publications/2018/acs/ACS-39.pdf>; <https://www.pewresearch.org/internet/fact-sheet/mobile/>



## Best Practices, Practical Tips, and Other Considerations for Conducting Online Trials

Online court proceedings involve a new medium and a new set of resources and skills far too numerous to be included in this review; we will focus the rest of this paper on general best practices and considerations for the post-pandemic future of trials.

Most of the resistance that we have seen to online court proceedings stems from the comparison to traditional pre-pandemic in-person proceedings. It is true; they are different. Rather than compare these new procedures to what is familiar, however, we find it more beneficial to weigh these practices by the available resources that counsel or the courts have to implement them, whether any given case can be appropriately communicated in an online trial, and by the overall effectiveness of the procedures on a given aspect of the trial. Any new practice or skill is uncomfortable at first, but we should not let our comfort level determine what may be efficacious for our justice system. Most attorneys who have participated in online hearings, mediations, bench, and even jury trials have learned to effectively represent their clients and present their cases online.

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### The Technology

For online court proceedings, all participants need the following equipment that allows them to see, hear, and participate in the proceeding:

1. Devices that allow the judge, courtroom staff, attorney, witnesses, or jurors to clearly see, hear and participate in the proceeding. Equipment may also include additional web cameras or microphones.
2. A consistent internet connection.
3. Applications and software that allow the participant to connect to the online courtroom proceedings or to present evidence, arguments, and to send and receive documents.

### DEVICES

- Prospective jurors can participate in the jury selection process with a smart phone if they do not have an available computer. However, the empaneled jurors should be able to view the trial with at least an 11-inch screen to be able to have a clearer view of exhibits and witness testimony.

To avoid excluding jurors who cannot afford a computer, if possible, the court or one or more of the parties should provide a device to the juror for the duration of the trial.

- The judge, courtroom staff, and attorneys should each have a computer and additional monitor or monitors. Each should dedicate one screen to the proceeding and another screen or screens of sufficient size to allow them to clearly view trial participants and exhibits, to send and receive documents, and to be able to communicate with each other and the attorneys. The judge or the judge's staff should be comfortable with facilitating the movement of jurors or parties into various rooms. If possible, attorneys should have a dedicated trial computer aside from their personal or work computer to avoid the inevitable influx of emails or distracting work-related messages during the trial day. If external cameras or microphones are used, test them. Practice to ensure clarity of sound and picture.
- The court and attorneys should have backup or redundant devices available in the event of a computer failure.

- Instruct participants to disable all audible alerts on their phones, tablets, and computers.

## INTERNET CONNECTION

- A strong and consistent internet connection is vital to an uninterrupted online court proceeding. Although you can get away with a 1.5 Mbps of upload speed and 5 Mbps download speed, depending on the time of day, the location of the device, and number of people using the internet at a given time, it is advisable for trial participants to have 5 Mbps of upload speed and 10 Mbps of download speed on a wired connection, if possible. Higher speeds may be necessary if there is heavy internet usage at a residence, business, or government facility.
- For participants without access to the internet, or in case of internet outages in areas, arrange a separate location, such as government facility, library, or hotel available where a juror, witness, or party can have a more consistent internet connection.
- If a separate location is not available, the courts or parties can also provide a modem or “hot spot” for jurors.

- Jurors who do not have “unlimited” data plans may need to be compensated for their excess data usage during the trial.

## APPLICATIONS/SOFTWARE

- Confirm that all participants have downloaded the latest version of the videoconferencing platform being utilized by the court. Attorneys are responsible for ensuring their clients and witnesses have the correct software. For jurors, the court should anticipate providing technical guidance and a helping hand.
- Confirm that attorneys and the court have the presentation software or programs needed to display various documents and demonstrative exhibits during the trial.
- Designate a communication platform by which all participants can communicate with the court. If attorneys and clients are in separate locations, they should have a separate communication channel so they can confidentially communicate with each other during the trial. (i.e. Slack, iMessage, Google Hangouts, etc.)





## Preparation and Planning for Online Trials

Preparation is critical for any trial, but especially important for a new forum such as online court proceedings. We will outline three areas of necessary preparation and planning. We recommend that any jurisdiction considering online procedures develop a committee—including court administration, judges, and local bar and litigation leaders—to provide input into protocols and to communicate to the jurisdiction’s legal constituency.

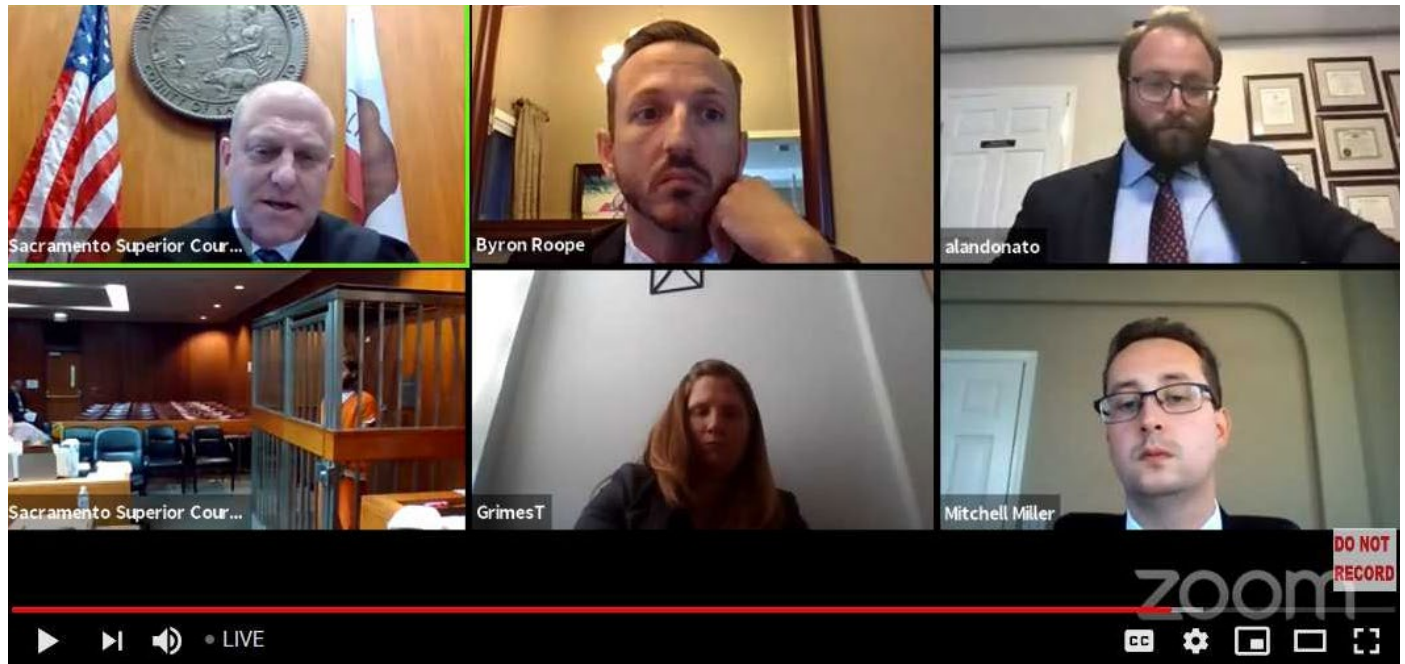
### COURT PLANNING— RECOMMENDATIONS FOR COURTHOUSE SUPERVISORS AND STAFF

- Inventory available infrastructure and equipment when considering implementing online court proceedings. In planning, contemplate the number of courtrooms that will need to have the technology, hardware, and software—including security protocols—available to accommodate the number of anticipated online trials.
- Implement training protocols for court administrative staff and IT support to assist in troubleshooting technology issues with individual courts as well as assisting litigating parties, counsel, and jurors to navigate online proceedings.
- Ask the jury commissioner’s office to develop jury summons procedures that include questions about whether jurors have the available technology and internet capabilities to participate in an online trial.
- Similarly, develop protocols to coordinate the administration of online supplemental juror questionnaires that individual courts may need to distribute and collect for specific trials.
- Assess whether the available budget will allow the court to purchase, lease, or obtain equipment to distribute to jurors who do not have the

available technology (laptop or tablet, modem or hot spot) to participate in online proceedings. Court administration should coordinate with the individual judge about the trial court’s specifications for distributed technology.

### JUDICIAL PLANNING— RECOMMENDATIONS FOR JUDGES IN THEIR COURTROOMS

- Ideally, you and your colleagues will collaborate on standard online hearing and trial procedures such as jury selection, witness testimony, handling of exhibits and objections, attorney presentations for opening statements and closing arguments, jury instructions and jury deliberations.
- Decide with your staff whether the trial will be conducted from the courtroom itself or from their respective residences or other locations.
- Ideally, each court conducting an online trial will have at least one trained “technology bailiff” to assist jurors, witnesses, or attorneys in navigating online court procedures as well as managing the distribution and communication with hearing or trial participants for attorney appearances, sidebars, jurors to a virtual jury room, witness testimony, jury deliberations, and admittance of exhibits. Technology Bailiffs may serve as “host” of the online proceedings and may be part of the existing courthouse staff or a hired third-party specialist.



- In developing a trial schedule, anticipate both case complexity and factfinder comprehension. Counsel attorneys to consider and plan case presentations that communicate their essential case and to avoid extraneous or redundant testimony. Take shorter and more frequent breaks to avoid attention fatigue.
- To potentially decrease juror hardship responses, consider shorter trial days and shorter lunches to accommodate juror work or care giving responsibilities, as well as to maximize trial time.
- Encourage counsel to submit and agree upon a supplemental jury questionnaire to be distributed and collected prior to jury selection. This will promote an efficient jury selection process focused on juror information that allows the meaningful exercising of cause and peremptory challenges.
- If selected jurors do not have access to the needed technology or space requirements needed to view and hear an online trial, assess whether the court or the parties can provide them with the needed computer or internet access equipment or to provide a space for them to view the trial without interruption.
- Develop a system for communicating, admitting, and displaying exhibits during a trial proceeding.
- Create special preliminary or jury instructions regarding trial schedules, contacting the technology bailiff, juror attention, avoiding research or communication about a given matter, avoiding judging the evidence or testimony on the disparity of perceived technical sophistication, how to meaningfully deliberate with other jurors, and communicating with the technical bailiff about jury requests during deliberation and the verdict.
- To encourage juror engagement, if appropriate, allow jurors to submit questions via a chat or messaging function for a given witness, which the court and counsel can decide whether to ask.

## ATTORNEY PLANNING— RECOMMENDATIONS FOR COUNSEL APPEARING REMOTELY

- For online hearings or trials, decide whether the trial team and clients will be in one or several locations. If in different locations, establish a separate communication channel via videoconferencing, text, or a confidential and secure chat function to ensure the ability to communicate clearly and quickly.
- Make certain you, your staff, your clients, and any witnesses are familiar with the technology platform that will be utilized by the court to ensure a seamless and smooth motion, hearing, conference, or trial presentation.
- In planning trial presentations, consider not only the evidence you need to present, but how that evidence will be understood, retained, and used by the factfinder in a bench or jury trial. Create a sequence of testimony and evidence that aids comprehension and also highlights your essential arguments about the meaning of the evidence and its application to the law and the factfinders' decisions.
- When planning both direct and cross-examination, carefully consider which documents, exhibits, or recordings to use and how to show them to the judge or jury in a screen share or trial presentation program. Additionally, if your or your witness will annotate specific documents or exhibits, practice this well in advance of a hearing, motion, or trial with the same hardware and software that will be used in court.
- Plan your trial presentation room in accordance with the technology practices outlined above, your preferred presentation style, and the needs of the case.
- If a selected juror does not have computer or internet equipment or space that allows them to view and hear a trial in an uninterrupted

manner, consider whether you can provide this equipment and/or a neutral space to the juror, with agreement from opposing counsel.

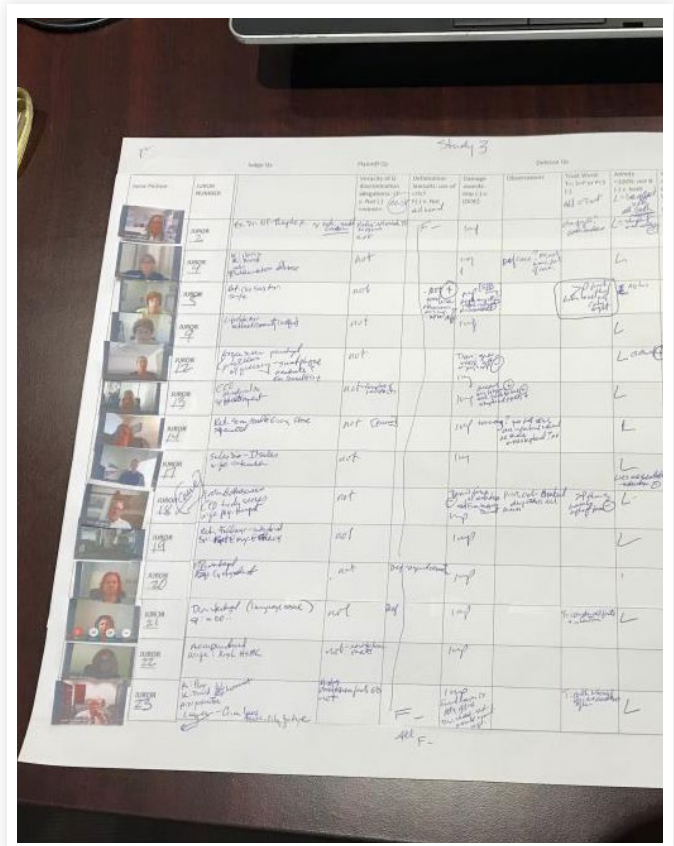
## JURY SELECTION IN ONLINE TRIALS

- Anecdotal reports from online trials have shown that conducting online jury selection increases response rates, participation, and the diversity of jury pools.
- Courts should allow jurors to participate in the jury selection process with a smart phone, although a computer or tablet is preferable. If a juror does not have the equipment to participate online, but has still responded to the summons, the court and the parties should discuss in advance whether they can provide a space at the courthouse or another location for the prospective juror to participate.
- Ask jurors to remain stationary with their cameras on and in a quiet space by themselves in order to participate in the voir dire process.
- If the court and parties deem it appropriate to distribute supplemental juror questionnaires, send a link to the online questionnaire via email or text. There are numerous platforms that can easily support an online questionnaire such as Google Forms, SurveyMonkey, or Qualtrics. The court should decide on a secure platform that provides confidentiality.
- The court should communicate with counsel how they intend to handle various jury selection procedures, including number of jurors called, hardship procedures, the handling of cause and peremptory challenges, sidebars, private discussions with jurors, number of alternates, etc. at least several days in advance of selection in order to allow counsel to be more efficient and effective in voir dire.
- In designing supplemental juror questionnaires, counsel should focus on experience and attitude questions that will assist them in assessing



a juror's impartiality in order to meaningfully exercise cause and peremptory challenges. Avoid indoctrination questions and save questions about legal concepts for voir dire. Consider juror comprehension when crafting the wording of the questions.

- If possible, supplemental online juror questionnaires should be sent and returned at least a full day to several days in advance of the voir dire process to allow counsel to efficiently plan their voir dire process. If the juror is not able to complete an online questionnaire, the court can provide for the juror to come to the courthouse and fill out a paper questionnaire which can then be scanned and sent to counsel.
- Counsel should review the questionnaires and plan their voir dire questions to follow up on individual juror questionnaire responses as well as any additional inquiry areas not covered by the questionnaire.
- Counsel should discuss with the judge any additional questioning areas they feel would be best conducted by the judge, as opposed to counsel, as well as any juror responses that should be discussed in private with the juror.
- The courts should decide whether they will be using juror names, juror numbers or both. If your platform allows, have the technology bailiff or court personnel fix jurors in a single position on the screen so the court and counsel can more accurately track juror responses. The courts and all attorneys should understand the features of the platform and how to customize the view.
- Both counsel and the court should develop their own protocols for keeping track of individual and group jurors and their responses in voir dire and their questionnaires. If allowed, take screen shots of individual jurors and juror questioning groups and insert these into spreadsheets in order to ensure accuracy in recording a juror's response.
- The courts should gather all summoned jurors in a virtual room prior to the beginning of the voir dire process. For voir dire, call jurors into the main online courtroom in groups or panels of no more than ten to twelve jurors to make it easier for the court and counsel to track juror responses.
- Ideally, depending on the size of the jury summoned, schedule jury panels to appear at different time slots to maximize the efficient use of the juror's time and minimize potential WiFi bandwidth issues.
- While arbitrary time limits should not be put on counsel's voir dire, encourage counsel to discuss with jurors those specific case issues that may affect a juror's impartiality, rather than trying to persuade or indoctrinate the jurors to their case themes.



- Counsel should question jurors with a conversational tone to put jurors at ease and increase juror candor. Take a nonjudgmental approach to voir dire and engage jurors with true curiosity to explore how their life experience and attitudes might affect how they listen to the case; you will acquire better quality information for making cause and peremptory challenges. This conversational approach to voir dire will foster a better rapport with jurors.

## ONLINE COURT PRESENTATIONS

- The fundamentals of good communication—organization, clarity, and conviction—apply just as much when an attorney or witness is online as when they are in person. The forum is different, however, and attorneys must adjust their delivery of evidence, testimony, and argument in order to convey the intended message of counsel and the witness.
- Participants may opt for an external camera or microphone with better quality than those built into the device. Cameras with full HD resolution and better lenses have much better image quality. Microphone type, quality, and placement can greatly improve voice quality while rejecting unwanted noise. Choosing a mic with a physical mute button can be preferable to the virtual mute button on the teleconferencing platform.
- Many participants may opt to use headphones for best audio clarity. Those who opt to use speakers should have headphones available if audio feedback occurs with their speakers.
- To create a sense of direct eye contact with a person, online presentations require focusing on the small camera lens atop your laptop or desktop computer screen, or your webcam. On videoconferencing platforms, it is easy to focus on the tiles of the participants you are speaking to or your own tile, which are placed below or to the side of the camera. Practice speaking directly to the camera when asking questions or presenting



your argument—and have your witnesses practice delivering testimony directly to their camera lens. If need be, place a visual reminder by the camera lens to remind the speaker to direct their gaze at the camera rather than the screen.

- When speaking, look into the camera lens, and “listen” with your peripheral vision to the person(s) they are talking to. When not speaking, look at the participant who is speaking.
- If the videoconferencing platform allows it, turn off your self-view to avoid being distracted by your own appearance.
- Adjust the height of the laptop, tablet, desktop, or webcam so that the camera is at eye level. Note that some webcams are designed to capture the entire room behind a presenter (for use in conference rooms). If your camera appears like a “fish-eye lens,” consider using an external webcam with a zoom feature.
- Because the mechanical eye of a camera is a poor substitute for human eye contact, try and visualize that you are speaking to a family member, friend, or colleague—consider placing a picture of that person behind the camera. Whether judge or jury, a factfinder will listen more carefully if they feel you are speaking to them directly.
- If you must read material, place a second monitor behind your laptop or webcam and scroll that material just above the camera in order to keep

your eyes from dropping down and losing eye contact.

- Lighting is very important in conveying the appearance of the attorney or witness. Direct soft lighting toward the speaker's face from just behind the camera, whether from a window or lighting source. If direct overhead lighting cannot be avoided, a standing or table lamp can soften the harshness of overhead lighting. If the presenter needs to wear glasses, try to adjust the lighting source to minimize the glare off the lenses.
- The presenter should have a neutral, uncluttered background that ideally contrasts with the speaker's skin tone and clothing color. Unless mandated by the court or inescapable, avoid virtual backgrounds as some movement tends to disappear into the background. Additionally, as

authentic communication is even more important in an online setting, a virtual background tends to reinforce the sense of a "staged" presentation.

- Consider the physical position that you and your witnesses will assume. When a presenter is sitting, it tends to convey a more casual conversational style. If sitting, center the presenter in the camera frame from about mid-chest to avoid being too close or too far from the camera. A standing presentation tends to convey a more formal style, and can also be more energetic and dynamic, depending on the presenter. If a standing presenter wants to use a podium, the podium should not be in the camera shot. Whether the presenter is sitting or standing, adjust the frame to ensure that the speaker either fills the frame from top of head to approximately the waist or is a "tighter shot" from mid-chest to top of head, with only a small amount of "head room" at the





top of the screen. Also take into account whether the presenter tends to gesture when they are speaking and therefore needs a slightly wider frame, although excessive gesticulation should be avoided.

- Videoconferencing presentations tend to be static. Consider incorporating movement into your presentation of witnesses and evidence. If you or your witness walk to a white board or flip chart to illustrate a point or to conduct a demonstration, a cameraperson will need to follow with a tablet or camera and then focus on the presenter's illustration or demonstration. This can be effective and dynamic but must be extensively practiced to ensure a smooth presentation and camera shot.
- Without the physical presence of other trial participants, it is even more important to consider the visual elements of your presentations. Whether using a PowerPoint, trial presentation software, an onscreen white board, or annotating a document, photograph, or recording, pay careful attention to effectively communicating the graphic or demonstrative elements of the case, especially when longer or more complicated testimony or arguments are involved.
- For each presentation, whether it is your witness's testimony or your arguments, decide on the three to five main points or messages you want to convey. Organize your presentations around those points in order to assist the judge or jury to understand and apply your evidence or argument to their decision process.
- Test your presentation room for sound quality—if your witnesses will not be in the same room, test their presentation spaces as well. Choose rooms with carpeting, curtains or furniture that help to absorb the sound. Rooms with only hard surfaces tend to create an echo or bounce that can distort the clarity of the speaker's voice. If echo is a problem, placing pillows and towels against hard surfaces is quick temporary fix. Even cardboard

helps—and who doesn't have extra Amazon boxes around these days? Also conduct audio tests to make sure that the computer microphone or other device can be adjusted to communicate the speaker's voice as clearly as possible. Perform tech checks using the same device, same location, and same equipment that presenters will be using in court.

- Mute yourself when not speaking.
- The strength of any presentation is as dependent on the intention of the speaker as the evidentiary or legal substance of their message. Whether it is the attorney or the witness, the presenter must know their material so well that their intention is on engaging their viewer/listener in the meaning of their presented material as opposed to just remembering the points they want to make.

## HANDLING OF EXHIBITS IN ONLINE PRESENTATIONS

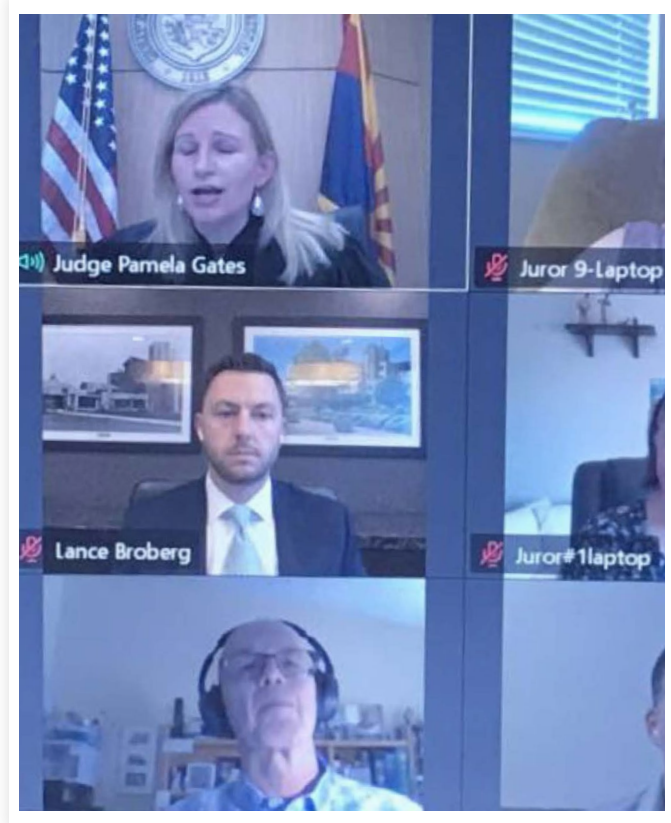
- In certain cases, the court and the parties may decide to give jurors exhibit notebooks. If so, a court-created FTP site or file viewing system allows jurors to view the designated exhibits and for the court to control when those exhibits become available, either at the beginning of the case or as they are entered into evidence.
- Ensure exhibits are paginated and/or Bates stamped appropriately.
- Ensure all parties have access to the electronic trial exhibits to easily access throughout trial. Most courts still request a hard copy.
- Trial software can be used to effectively present the exhibits and annotate on the fly, highlight, callout, and place documents side by side. Software like Adobe can also be used, however with fewer features.
- Communicate with counsel in advance and stipulate to the exhibits that can be displayed to

the jury without requesting “permission to publish” each exhibit.

- If an exhibit needs to be displayed to the witness before being displayed to the jury, use an FTP site; or the document can be sent via chat to the witness to lay the proper foundation.
- Pre-admit as many trial exhibits as possible to avoid procedural delays in court. Share proposed exhibits with objections in advance so each party has easy access to the document when it is referenced during the proceedings.
- Courts should develop protocols for impeachment documents or other exhibits that may not be shared in advance of use. This should include immediate access to the documents for parties who do not have them.
- Courts should develop protocols for physical exhibits. Ideally, each party, court and witness will have their own copy. In instances where there is only one unique exhibit, parties must determine where that evidence resides during testimony and how jurors will interact with it for their deliberations.

## JURY INSTRUCTIONS AND DELIBERATIONS IN ONLINE JURY TRIALS

- To assist jurors and counsel to operate effectively in this new procedural forum, the court may consider developing a series of guiding instructions for proper use of the online forum.
- Like any trial, jurors should be viewable by the court, the attorneys, and the parties at all times. Jurors should be alone with no other persons in the room.
- Whether a formal or advisory instruction, caution attorneys not to communicate with witnesses, by text or other messaging application, while they are testifying.



- In order to avoid distraction and ensure attention, instruct jurors to close all other programs but the videoconferencing platform software on their computers if they are using personal or work computers.
- Additionally, all other devices in the room where the juror is viewing the trial should be turned off (not just on “silent”) to avoid constant distracting texts or alerts. Instruct jurors that in case of power or internet outage, they should have a landline number or turn on a cell phone so the court can contact them.
- While jurors are routinely instructed not to conduct independent research on a case, emphasize this in online trials as they will be spending a significant part of a court day on their computer.
- Similarly, in viewing a trial from a residence, jurors may be interacting with family or co-workers

on breaks. Given this immediate interaction, emphasize that they are not to discuss the case with others.

- Because there may be disparities in the technology that each of the parties uses in presenting their case, instruct jurors to weigh the evidence, witnesses, and law, and not to give undue meaning to one side's technological capabilities over another.
  - In deliberations, instruct jurors that all jurors must be present at all times when they are discussing the case. If a specific juror drops out, it is the jurors' duty to cease deliberations and contact the bailiff to get the juror reconnected.
  - Provide jurors with a separate and secure messaging channel in which they can
- communicate with the technical bailiff about questions or a verdict.
  - Instruct the jury to give all jurors the opportunity to discuss the case, despite their relative experience and proficiency with the videoconferencing format.
  - If the jury requests and is granted permission to review trial exhibits or testimony, these can be placed in a secure folder on an FTP site for the jurors to access along with instructions on how to access these documents.
  - Similarly, the verdict form can be sent to the foreperson in a markable PDF format or an online form can be used.

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## Conclusion

Innovation is not the enemy of tradition. Keeping our justice system operating in times of crisis requires literally thinking outside the box and pushing ourselves outside of our comfort zones to learn new tools and practices. In doing so, we not only maintain the necessary access to our important constitutional system, but we create efficiencies and effective procedures to improve our courts.

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## OCP ADVISORY BOARD

**Richard Gabriel**

President  
Decision Analysis, Inc.  
[rgabriel@decisionanalysisinc.com](mailto:rgabriel@decisionanalysisinc.com)

**Ronald Beaton**

President, Senior Jury Consultant  
Trial Behavior Consulting  
[rbeaton@trialbehavior.com](mailto:rbeaton@trialbehavior.com)

**Ted Brooks**

Founder, Litigation Consultant  
Litigation-Tech, LLC  
[tbrooks@litigationtech.com](mailto:tbrooks@litigationtech.com)

**Chris Dominic**

President, Senior Consultant  
Tsongas Litigation Consulting, Inc.  
[chris.dominic@tsongas.com](mailto:chris.dominic@tsongas.com)

**Daniel Friedenthal**

Trial Attorney, Partner  
Friedenthal Heffernan & Brown  
[dfriedenthal@FHBLawyers.com](mailto:dfriedenthal@FHBLawyers.com)

**Alicia Aquino**

Trial Technology Consultant  
Aquino Trial Services  
[alicia@aquinotrial.com](mailto:alicia@aquinotrial.com)

**Ken Broda-Bahn, Ph.D.**

Senior Litigation Consultant  
Persuasion Strategies  
[kbrodabahn@persuasionstrategies.com](mailto:kbrodabahn@persuasionstrategies.com)

**Lisa DeCaro**

Founder, Trial Consultant  
Courtroom Performance, Inc.  
[decaro@courtroomperformance.com](mailto:decaro@courtroomperformance.com)

**Jeffrey T. Frederick, Ph.D.**

President  
Jeffrey Frederick Trial Consulting  
Services, LLC  
[jfrederick@jftcs.com](mailto:jfrederick@jftcs.com)

**Judge Gary Hastings**

[grhastings@aol.com](mailto:grhastings@aol.com)

**Jillian Hayes**

Attorney  
Casey Gerry  
[jhayes@cglaw.com](mailto:jhayes@cglaw.com)

**Karen Lisko, Ph.D.**

Senior Litigation Consultant  
Perkins Coie LLP  
[klisko@perkinscoie.com](mailto:klisko@perkinscoie.com)

**Judge Lisa M. Rau**

Founder  
Resonate Mediation and Arbitration  
[judgerau@resonatemediation.com](mailto:judgerau@resonatemediation.com)

**Robert J. Kopka**

Managing Partner  
Kopka Pinkus Dolin  
[rjkopka@kopkalaw.com](mailto:rjkopka@kopkalaw.com)

**Judge Richard B. Klein**

Dispute Resolution Institute  
[richardklein61@yahoo.com](mailto:richardklein61@yahoo.com)

**Sarah Murray**

President & CEO  
TrialCraft  
[smurray@trialcraft.com](mailto:smurray@trialcraft.com)

**Eric Traut**

Traut Firm  
[eric@trautfirm.com](mailto:eric@trautfirm.com)

**Geoffrey A. Vance**

Partner and Chair,  
E-Discovery Services & Strategy Group  
Perkins Coie LLP  
[gvance@perkinscoie.com](mailto:gvance@perkinscoie.com)

**Josh Splansky**

Trial Presentation Specialist  
Josh Splansky Consulting  
[joshsplansky@courtresent.com](mailto:joshsplansky@courtresent.com)

**Noah Wick, M.A.**

National Director of Litigation Consulting  
Trial Exhibits, Inc.  
[nwick@trialex.com](mailto:nwick@trialex.com)