

# Remote Jury Trials: Yes You Should and Here's How

**Panel:** The Honorable Karin Crump | 250<sup>th</sup> Civil District Court  
The Honorable Lora Livingston | 261<sup>st</sup> Civil District Court  
Prof. Tracy W. McCormack | Director - Advocacy Programs, U.T. Law  
Velva Price | Travis County District Clerk  
Sherrie Wirth, M.B.A. | The Exhibit Co. & ExhibitSticker.com Founder



**AUSTIN BAR ASSOCIATION**

July 27, 2020

# Can't We Just Wait?



**Nothing moves a  
case like a trial  
setting**



**Many clients can't wait.**

**Just like nurses,  
doctors, grocery  
store workers,  
custodians---it's  
our turn to help**





# The Reality



# No Jurors



Houston: July 17, 2020

5,000 people summoned.

**NO JURY.**

HOUSTON★CHRONICLE

LOCAL // HOUSTON

## Turnout for grand jury selection drops during pandemic



Samantha Kellner | July 27, 2020 | Updated: July 17, 2020 5:58 p.m.



The new way of grand jury selection is set up during the coronavirus pandemic, Monday, July 6, 2020. Photo: N-C/M (see Houston Chronicle) Staff photographer

Fewer than 9 percent of Harris County residents summoned for grand jury selection showed up last week as the service moved to NRG Arena to accommodate social distancing measures, according to the Harris County District Clerk's Office.

# What Type of Jurors?

June 2020

Poll of 850  
Eligible  
Texas Jurors

G B A O

## National Center for State Courts Texas Juror Poll

June 2020

*N = 850 eligible Texas jurors*

*Conducted June 8-11, 2020 via landline, cell phone, and online interviews*

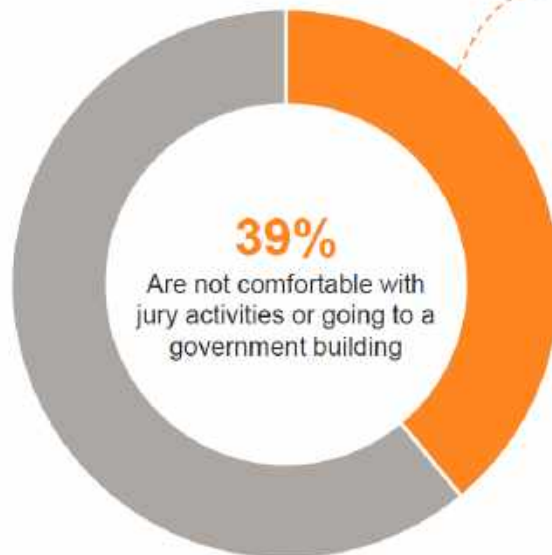
*Margin of error = +/- 3.4 percentage points*

# What Type of Jurors?

## Democrats, African-Americans, Women, And Seniors Least Comfortable With Participating In-Person Court Services

Figure 11

### Court Activities



Individuals least comfortable with participating in in-person court activities:

- 66% of liberals
- 56% of African Americans
- 49% of college educated women
- 49% of high-risk households
- 47% of older women
- 47% of seniors



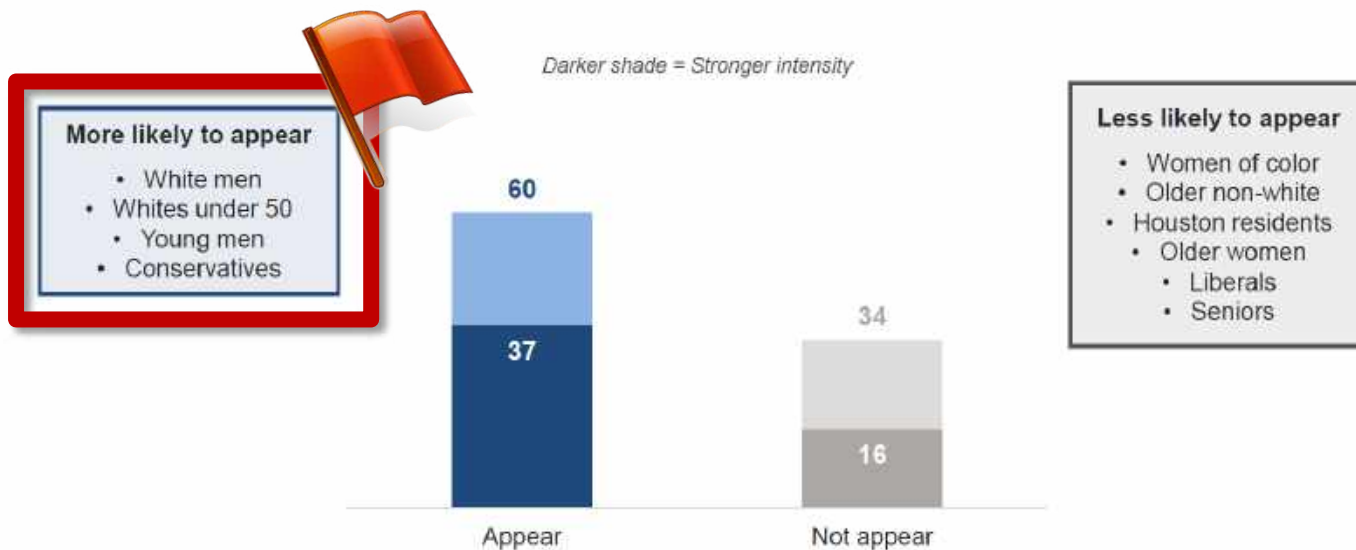
# What Type of Jurors?

## Jury Pool Composition Could Be A Challenge

Figure 20

### Appear For Jury Duty

*If you received a summons to appear for jury duty in the next three months, would you definitely appear for jury duty, probably appear, probably not appear, or definitely not appear for jury duty?*





## San Mateo County suspends jury trials — employee tested positive for COVID-19

Bob Rignall | July 20, 2020 | Updated July 20, 2020 10:28pm



California Supreme Court Chief Justice Tani Cantilero-DaChavez's 60-day leave has been resumed. Now San Mateo County has halted them again.

# And then there's this...

## Seven Days Ago

July 20, 2020  
San Mateo, California

"Out of an abundance of caution, we decided to let the jury go at that point and will start all over," Taniguchi said. "We will re-examine the whole process. We've been worried how to ensure all jurors will stay healthy through the course of the trial, and all parties including courtroom personnel will stay healthy. ... These are uncharted waters."

And then there's this...

## First Douglas County murder trial in months ends abruptly over apparent coronavirus case

By Todd Cooper  
Omaha World-Herald | Jul 21, 2020 | Updated at 7:21, 2020



**Juror #1 tested  
positive for  
COVID-19**

**Six Days Ago**

**July 21, 2020**  
**Omaha**

Prosecutor Amy Jacobsen, a deputy Douglas County attorney, said **shutting down the trial was the “responsible” decision.** Another attorney noted that the county potentially could be held liable if, after receiving information about a positive test, officials had proceeded and someone had gotten severely ill.



# **The NEW Reality of Live**

# Trial “in the Round”



**Bowie County District Court: Judge Bill Miller**

July 2020



# New Reality of Live



**Plexiglass**



**Distancing**



**Leaving the courtroom for  
bench conference**



**Mask—jurors and lawyers**



**No approaching witness**



**No tangible exhibits**

# Ethical Concerns

Texas Is Latest State To Adopt Duty Of Technology Competence



Required to know and use technology



***“Summer of 2021”***

**Dr. Mark E. Escott MD**

Austin, TX **APH INTERIM HEALTH DIRECTOR**

Disclose that it may be years not months



Fiduciary obligation to disclose—honest choices



Fiduciary disclosure to disclose if you are not able or willing



# **Advantages to Remote Jury Trial & Dispelling Myths**



# Myth: Can't "Read the Jury" Virtually





# Myth: Voir Dire Won't Work Remotely

## Online Courtroom Project July 15, 2020

### ONLINE JURY TRIALS: SUMMARY AND RECOMMENDATIONS



#### Conclusions

Voir dire worked quite well in an online environment. The attorneys and consultants remarked that they were able to see and hear the jurors more clearly online than they usually can in the courtroom.

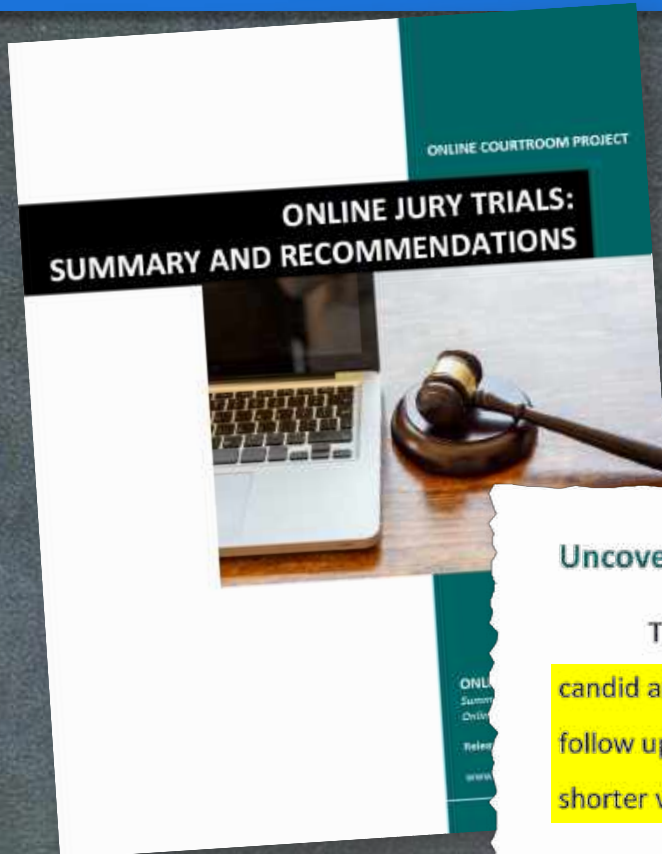


Plaintiff's Attorney:

*It seemed like the jurors were more relaxed and they usually are in a live courtroom. I was also able to see a lot more of their non-verbal information and reactions than I am often able to see in a courtroom, where I am often trying to see the panel from across the room, with tables and a podium in my way.*



# Better Information Through Questionnaires



Attorneys found that online questionnaires that jurors filled out before jury selection allowed them to prepare more thoroughly for voir dire questioning.

## Uncovering Unreported Bias and Follow Up

The major benefits of supplemental juror questionnaires include their ability to (a) elicit candid answers as compared to oral voir dire; (b) provide information that attorneys can use to follow up on experiences and opinions of jurors; and (c) produce more focused and, perhaps, shorter voir dire questioning. To illustrate the potential of supplemental juror questionnaires to

# Jurors More Candid in Their Own Homes

ONLINE COURTROOM PROJECT

ON  
SUMMARY AND RE

## Conclusions

Voir dire worked quite well in an online environment. The attorneys and consultants remarked that they were able to see and hear the jurors more clearly online than they usually can in the courtroom.



Plaintiff's Attorney:

*It seemed like the jurors were more relaxed and expressive than they usually are in a live courtroom. I was also able to see a lot more of their non-verbal information and reactions than I am often able to see in a courtroom, where I am often trying to see the panel from across the room, with tables and a podium in my way.*



# Previous Live Jury Experience vs. Remote

## ONLINE COURTROOM PROJECT ONLINE JURY TRIALS: SUMMARY AND RECOMMENDATIONS

- Jurors were able to clearly view witness testimony and exhibits in both direct and cross examination. Some jurors who had sat on previous juries felt it was easier to judge witness credibility because they had a closer view of the witness rather than looking across a courtroom. Many felt that they were able to clearly view the documents and demonstrative exhibits. Some jurors with previous jury experience also felt they could see documents more clearly because they were on a screen in front of them as opposed to viewing them across a courtroom.



# Jurors Attentive and Engaged in Meaningful Discussions

- Jurors were attentive and engaged during the presentation of evidence during the trial.

- Jurors were able to see and hear each other during deliberations and were able to engage in meaningful discussions about the evidence in the case.

ONLINE COURTROOM PROJECT

ONLINE JURY TRIALS:

ONLINE COURTROOM PROJECT  
Summary and Recommendations for  
Online Jury Trials  
Released July 15, 2020  
[www.onlinecourtroom.org](http://www.onlinecourtroom.org)

# Summary of Online Courtroom Project



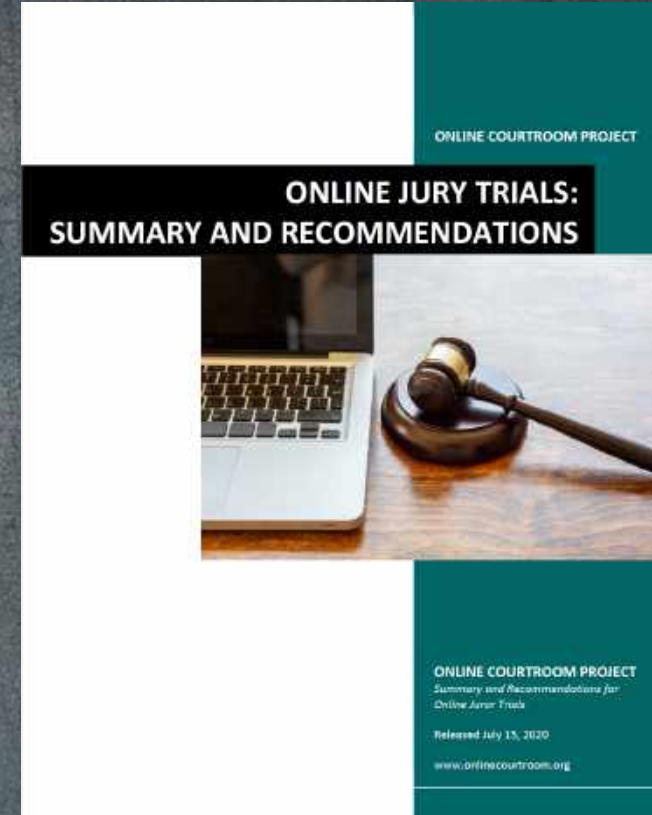
Overall, aside from some of the technical delays and the obvious difference in format between an in-person and an online trial, most of the participants were able to perform their main job functions as they would in a normal trial..



Judges who observed the demonstration trial commented that the proceedings looked like “a real trial.”



All of the jurors who participated in the demonstration trial said they would be willing to participate in a real online jury trial.



# Myth: But There's a Digital Divide...





# Myth: Courts Are Not Prepared

G B A O

## National Center for State Courts Texas Juror Poll

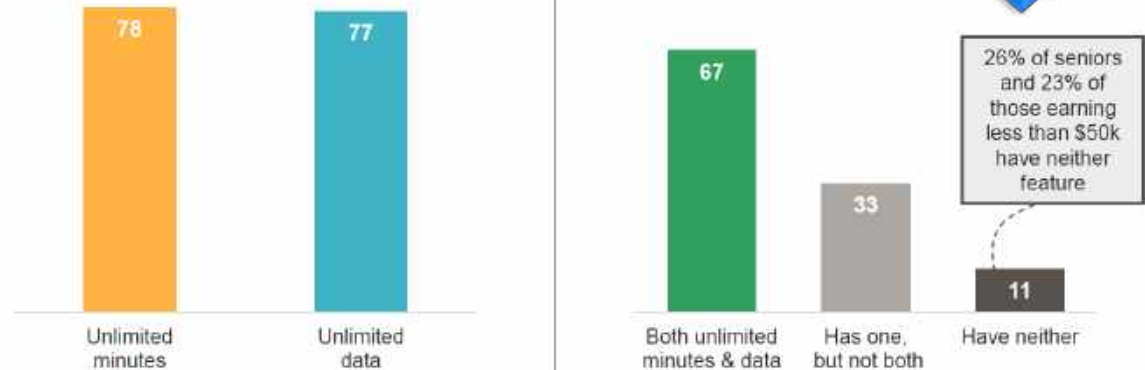
*N = 850 eligible Texas jurors  
Conducted June 8-11, 2020 via landline, cell phone, and online interviews  
Margin of error = +/- 3.4 percentage points*

## NCSC Texas Juror Poll June 2020

But Not All Have Wireless Plans That Enable Them To Engage

### Wireless Service

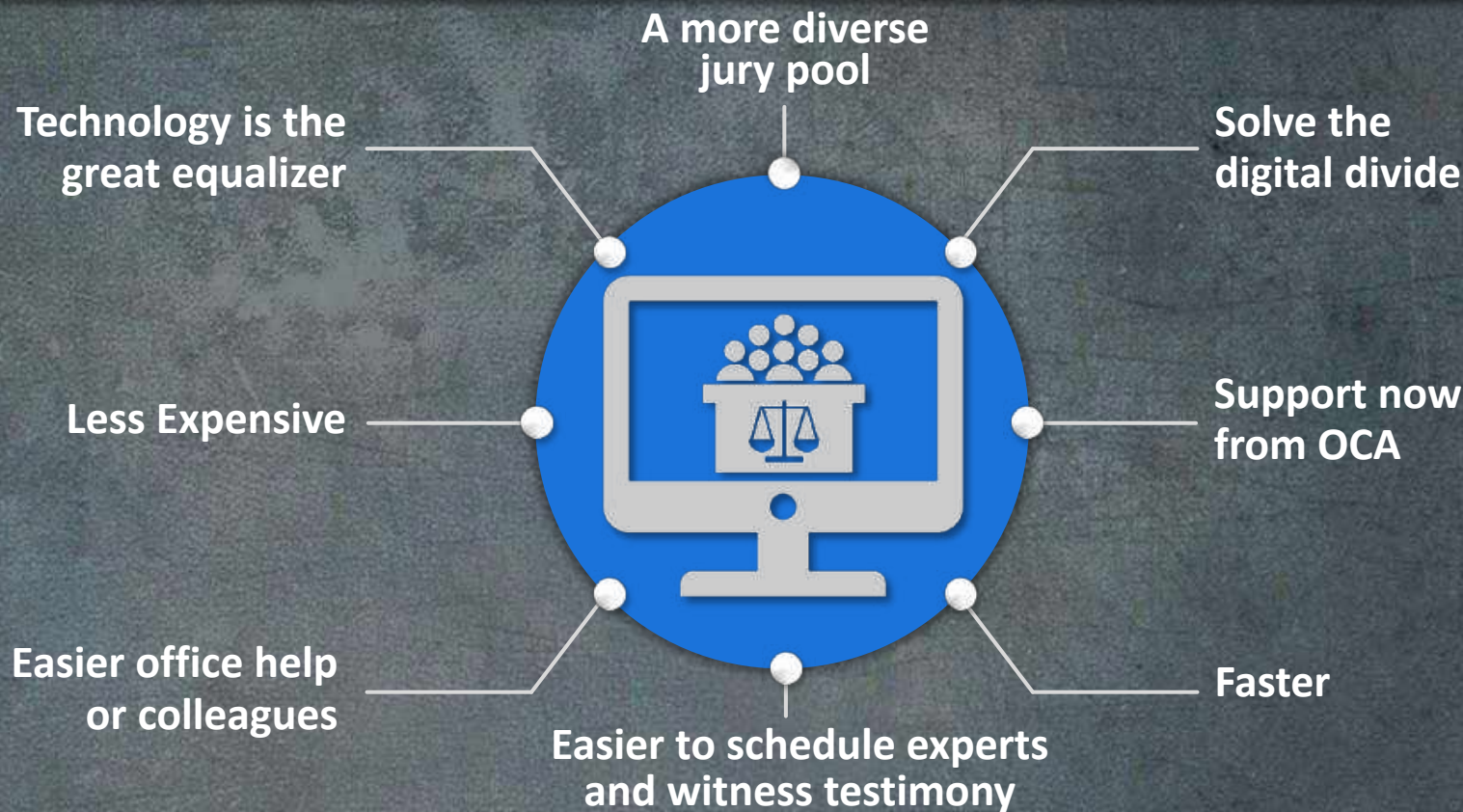
Does your wireless plan include any of the following?



Courts are prepared to deliver iPads with hot spots.



# Summary of Advantages of Remote Jury Trials



**Collin County Judge Emily Miskel  
virtually swears in potential jurors for  
a summary jury trial on May 18, 2020.**

**Judges and  
Jurors Are Ready**





# Nuts and Bolts Of Remote Jury Trials

# Embracing Technology



## Judges Rush to Learn Video Conferencing as Shelter-In-Place Orders Spread Across Texas Metros

As shelter-in-place orders take effect this week, judges are beginning to overcome the challenges of the virtual hearings.

By Angela Morris | March 24, 2020 at 05:11 PM



Judges and attorneys from Houston participate in a video meeting, organized by R.K. Sandill, using Zoom, which is the system the Texas judiciary will use during the coronavirus pandemic. Photo: R.K. Sandill/Twitter

With shelter-in-place orders going into effect this week in Texas and judges are zooming—literally—to learn video conferencing to

The Texas Office of Court Administration has them covered.

The office has signed up more than 400 judges around Texas with accounts to use Zoom video conferencing, and is getting more courts connecting on a rolling basis. A webinar yesterday was maxed out at 500 participants to teach judges to set up Zoom, create YouTube channels, and learn to hold court hearings remotely and stream them live on the Internet. In the [webinar and other tutorials](#), the office even gave tips about what to wear, how to position the camera and background for the best shot, lighting tips, and more.

"I couldn't be prouder of the Texas judges than I am right now. They fully embraced this, even with the uncertainty and change and anxiety that comes with this," said David Slayton, administrative director of the Texas Office of Court Administration, during a video interview on Zoom. "Judges are just jumping right in. They understand the importance of trying to keep the judiciary operating as a stable part of the government amidst this instability."

Yesterday, he said, judges who are linked to the office's Zoom account held 92 court hearings.



# Investing In Technology: Zoom Paid Subscription



- 43% total market share (300 million daily Zoom calls)
- Embraced/supported by Texas Office of Court Administration
- 400+ Courts in Texas use Zoom

A screenshot of the Zoom website's pricing page. The page shows two main plans: 'Basic' (Free) and 'Pro' (\$14.99/month/host). The 'Pro' plan is highlighted with a yellow arrow pointing to it from the right. Below the 'Pro' plan, several features are listed, each with a yellow arrow pointing to it from the right. These features include: 'Meeting duration limit is 24 hrs', 'Admin feature controls', and '1GB of MP4 or M4A cloud recording'. The 'Basic' plan includes features like 'Host up to 100 participants', 'Unlimited 1 to 1 meetings', and '40 mins limit on group meetings'. The 'Pro' plan includes 'All Basic features +', 'Includes 100 participants', 'Need more participants?', 'User management', 'Reporting', 'Custom Personal Meeting ID', 'Assign scheduler', and '1GB of MP4 or M4A cloud recording'. The 'Pro' plan also has a 'Buy Now' button. The 'Basic' plan has a 'Sign up, It's Free' button. The page also includes links for 'SOLUTIONS', 'PLANS &amp; PRICING', and 'CONTACT SALES' at the top.

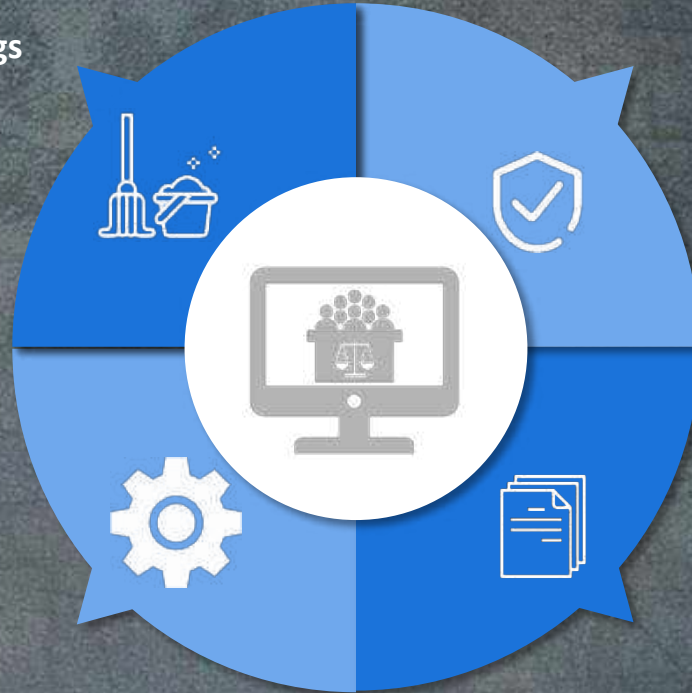
# Zoom Features to Be Aware of and Practice

## Housekeeping: Become Familiar With Your Global Settings

- Disable Individual Chat
- Disable video recording
- Mute Upon Entry
- Make Co-Host Feature
- Allow Screen Share (for hosts)
- Allow Annotation/Polling/Remote

## Technical Matters

- Video/Audio Testing (you and witnesses)
- Getting into/out of Breakout Rooms
- Setting your system to see up to 49 participants (Voir Dire)
- Virtual Background?
- Spotlight Witness [Host Only]



## Practical Tips

- Background/Lighting/Standing/Sitting
- Mute/Unmute [Space Bar Trick]
- “Share Screen” Practice
  - Clean Desktop
  - Share program instead of desktop
  - Share directly from BOX
- Annotation/Exchange Practice

## Evidence/Documents

- Share Screen to display exhibits [Pause Trick]
- Annotate and Save via Zoom
- Share files within “chat” or per Court protocol
- Use “Second Camera” as Elmo for physical evidence
- “Use Computer Sound” when showing video

## Guidance for Conducting Civil Jury Trials During the COVID-19 Pandemic

# Pre-Trial Checklist

Guidance for Conducting Civil Jury Trials  
During the COVID-19 Pandemic

American Board  
of Trial Advocates 

### Pre-Trial Checklist

- ☐ Requirement of personal protective equipment (masks, shields, gloves, sanitizer, plexiglass dividers)
- ☐ Screening of all participants for temperature, exposure risks, other symptoms
- ☐ Procedure for jury orientation
- ☐ Procedure for jury screening
- ☐ Seating of the jury panel
- ☐ *Voir dire* procedure and the use of jury questionnaires
- ☐ Communication of for-cause strikes
- ☐ Communication of preemptory strikes
- ☐ Seating of jury
- ☐ Public access
- ☐ Seating of counsel
- ☐ Whether movement in the courtroom and use of the podium is allowed
- ☐ Procedure for use and disinfection of common equipment such as white board, document presenter (Elmo), enlarged exhibits and physical exhibits or demonstratives
- ☐ Presentation of documentary exhibits (paper or electronic)
- ☐ Handling of documentary exhibits
- ☐ Jury breaks and bathroom protocol and disinfecting facilities
- ☐ Anticipation of objections
- ☐ Procedure for side bar conferences with court
- ☐ Disclosure of exhibits in advance for direct and cross-examination
- ☐ Breaks and protocol during breaks
- ☐ Number of cleanings (wipe downs) of the courtroom that will occur each day
- ☐ Sanitary storage of jury exhibit books, notebooks and other items at night
- ☐ Consequences of positive testing or symptomatology of any participant during trial (mistrial, adjournment, testing of all participants exposed?)
- ☐ Bathroom protocol and cleaning

# Remote Access Juror Questions

**The Court is currently permitting jurors to appear for jury service remotely using videoconferencing technologies. Please answer the questions below and return to us via**

\_\_\_\_\_ [insert e-mail address].

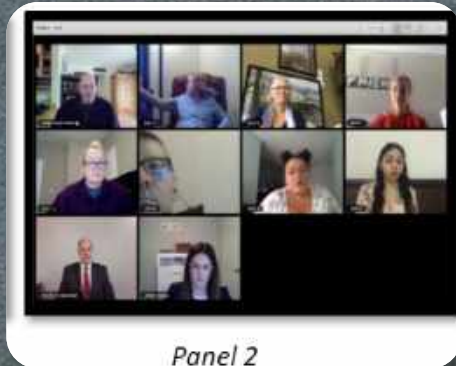
- I have high speed or broadband internet access at home. Y/N
- I have a computer, tablet, or cellphone and it has a webcam or camera. Y/N
- I have internet access ONLY through a smartphone, or other mobile device. Y/N

(Answer if you need to use your smartphone to connect remotely)

- My internet data plan on the device I would use to appear remotely provides unlimited data. Y/N
- I have used videoconferencing technologies (i.e. Skype, Teams, WebEx, or Zoom) at home or work. Y/N
- I have videoconferencing technology installed on the computer, tablet or cellphone that I will be using during the empaneling process.
- I have a private place in my home or office where I can use the internet without interruption from others. Y/N
- I have the ability to listen to the audio from my device through headphones or earbuds. Y/N
- My computer, laptop, smartphone, tablet can last all day or I have access to a charging device which will allow the technology to be charged all day, if necessary Y/N
- I am not able to appear remotely for jury service due to a lack of equipment to connect or comfort with using the technology. Y/N



# Jury Selection - It's Doable



- ➡ Manage jurors on screen-panel size
- ➡ Have someone else run tech
- ➡ Get help tracking
- ➡ Questionnaires ahead of time
- ➡ Zoom polls, raise hands, reactions
- ➡ Breakout room for individual questioning, attorneys

# Preparing Witnesses and You



Test equipment—  
lights, camera,  
action



Virtual  
backgrounds,  
green screens



You are a  
producer and  
director



Communication  
with client—  
texts, emails,  
private chat



# Direct / Cross: Managing Exhibits



Exchange exhibits  
ahead of time.

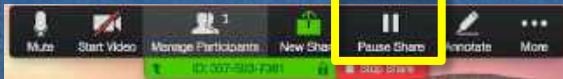
[Check with Court for protocol.]



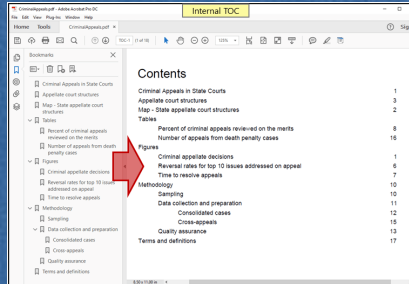
Pre-mark exhibits if possible.  
If not, plan and practice  
marking/sharing live.



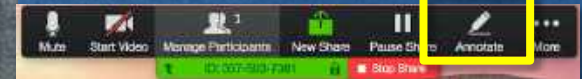
Consider sealed hard copies  
and tabbed notebooks.



Practice sharing screen in  
Zoom. Use **PAUSE** feature  
when changing documents.



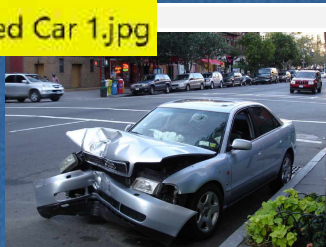
Use hyperlinked PDFs for  
clean navigation of Exhibits.



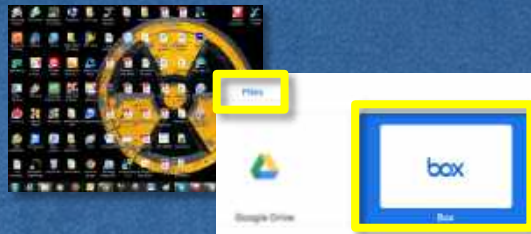
Practice with your witness  
*and* exhibits in Zoom. If  
using annotation feature,  
practice annotating, saving  
and sharing marked exhibit.

# Tips/Tricks for Sharing Exhibits Remotely

Smashed Car 1.jpg



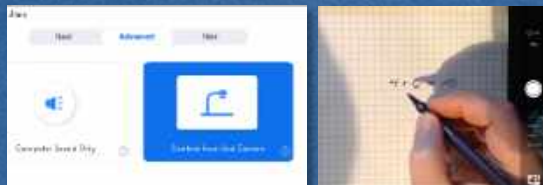
Be aware of what you name your documents. You don't want to pull up a document named "Smashed Car 1"



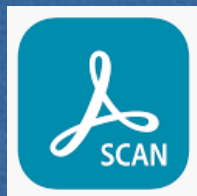
Make sure your computer "desktop" is clean. [Better yet share program file or files directly from Box]



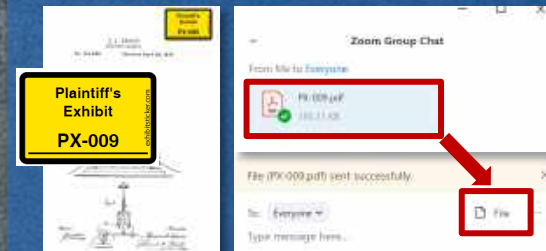
Close automatic alerts when sharing screen. [In Windows 10, there's computer function to *silence notifications when presenting.*]



Zoom Second Camera  
"Elmo" feature.  
[Can use phone or USB camera]



Turn your phone into a scanner using Adobe Scan.



Digitally Exhibit Sticker and Share files in Zoom Chat. [Free digital exhibit sticker at [exhibitsticker.com](http://exhibitsticker.com)]



# Openings/Closings

➔ Attention spans are shorter.

➔ Effective demonstratives more important than ever.

➔ Clear and concise road map / story critical.

### The Defendants



**Julian "Sonny" Hernandez**  
BASF Regional Manager



**Jesus Ramirez**  
BASF Trainer





**Richard Condray**  
FinishMaster Area Sales Manager



**Guillermo Lopez**  
FinishMaster Paint Technician




**Cathlynn DeGour**  
FinishMaster General Manager



### Deposition Testimony of John Smith

Depo Ex. 35



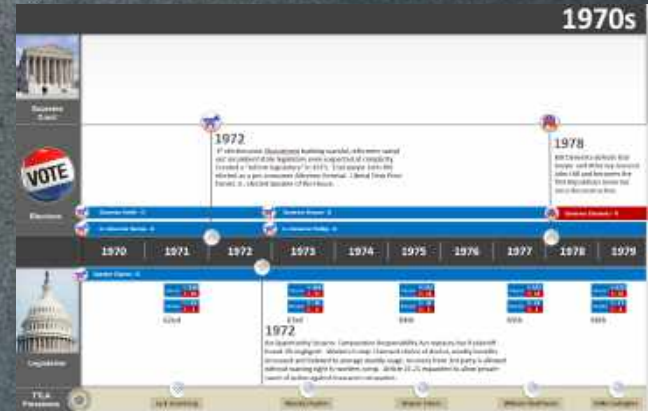
May 11 2005 8:33:38 AM

**EXHIBIT**

**FOURTH DEGREE AND FIFTH DEGREE AGREEMENT**

**1972**

THE VARIOUS AGREEMENTS, for assignment into "Fourth Degree" provided for per se... (text continues)






# A “New” Alternative: Summary Jury Trials

# Why is a Summary Jury Trial Beneficial?



One of the biggest benefits to a summary jury trial is that it turns the biggest unknown factor, the jury's reaction to a case, into a very effective settlement tool.

# Why is a Summary Jury Trial Beneficial?

A man in a dark blue suit and a woman in a black business suit are standing on opposite sides of a deep, sandy chasm. Both are shouting into white megaphones with red handles, facing each other across the gap. The woman is also carrying a black briefcase. The background is a clear, light blue sky.

In the situations where the parties are significantly disagreeing over the value of the case, a summary jury trial may be the way to go.



# But ... I don't want to show my hand!



## When were you surprised by your opponent?

True likelihood of either party being surprised by something in the other parties' case is slim in light of today's expansive pre-trial discovery procedures.

Indeed, there is a clear benefit to determining whether your strategy will resonate with the jurors before, rather than after, a six- or seven-figure jury award is on the line.

# When to use a Summary Jury Trial?



Before the parties are forced to incur the heavy financial costs of preparing for trial.



Thirty to sixty days after the discovery phase of the litigation.



Costs of preparing for it would likely be the same or close to the costs of arbitration proceedings or an extended mediation.

# Seizing the Opportunity of Short Form Trials



If you feel like you can present evidence more clearly and persuasively than most witnesses can.



If you feel like you can summarize expert witness testimony succinctly.



If you are confident in your ability to prepare and provide an effective closing argument.

**How Can We Help?**



**Panel Discussion**



**To sign up for the Travis County  
Civil & District Court Pilot  
Program, please contact Judge  
Crump's court staff at:**



**[250.submission@traviscountytexas.gov](mailto:250.submission@traviscountytexas.gov)**