

## GEORGIA

# Virtual Voir Dire Works — for Courts and Jurors

**AS THE COVID-19 PANDEMIC BEGAN ROLLING THROUGH THE UNITED STATES**, medical staffs were as busy as they had ever been. News reports showed doctors and nurses grabbing quick naps between long shifts. In contrast, business at corporations, restaurants, retail establishments, and other industries languished. Staff stayed home. The wheels of justice, already notoriously slow, ground to a halt.

Although not as immediately essential as the medical field, those of us in the legal profession had to adjust our routines — and adjust them immediately. We know that justice delayed is justice denied, and inmates in crowded jails, awaiting a court date amid a potentially contagious population, required us to rethink our processes quickly. While transitioning to virtual hearings seemed to happen quickly and nearly flawlessly for attorneys and court staff, the nagging problem of selecting jurors seemed impossible at first. And without jury trials, cases often lose momentum and the accused remain incarcerated.

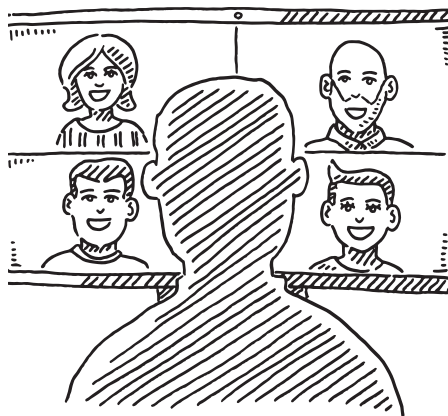
So, to select juries, courts found space in conference centers, stadiums, and theaters, anywhere that had enough room for the social distancing of the hundreds of people necessary for voir dire.<sup>1</sup> Courts prioritized criminal pro- ►

ceedings for the precious commodity of in-person jurors.<sup>2</sup> And to ensure civil cases were also getting their proverbial day in court, we looked to virtual jury selection.

Sure, there were problems to overcome. Virtual jury selection required a logistical effort that included onboarding jurors, coaching some through the virtual process, and ensuring potential jurors had stable wi-fi and a quiet place they could connect to give the proceedings their full attention. Some lawyers were skeptical, but buy-in from attorney groups like the Georgia Trial Lawyers Association and the Georgia Defense Lawyers Association helped bring initial acceptance.<sup>3</sup>

The benefits were many. In-person jury selection with COVID protocols could be cumbersome and often took longer than normal. By contrast, virtual jury selection proved faster, even when conducting general voir dire separately to each panel of 12. And while lawyers could only see jurors masked during in-person proceedings, virtual jury selection allowed them to see not only a juror's whole face but also to observe their "natural habitat." Jurors also seemed more forthcoming with responses when they were in their own space, rather than in an intimidating courtroom.

And the potential jurors, it turned out, almost universally loved it. I heard more than once how convenient and easy it was. One juror, selected to serve, told me that reporting to the courthouse for the actual trial seemed less of a bother because, at that point, "I knew I had a job to do and I came to the courthouse to do it." That was a common sentiment. With virtual jury selection, potential jurors didn't have to come downtown and sit in the courthouse all day, waiting to see if they would be needed. They could



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do work or laundry or make lunch for their kids while waiting for their panel to be questioned. Also, our procedure released each panel entirely after they had been questioned. That meant jurors who weren't selected might be virtually tied to the court for two to three hours, rather than an entire day. Jurors who were selected were contacted later and advised on when to report for service. Overall, there was no discernable effect on the representative makeup of the jury or nature of the panels — in fact, we had an increase of approximately 20 percent in show rate for virtual jury selection, as compared to in-person.

Virtual jury selection was by and large a positive process, but there were some limitations. For example, it was

unrealistic to pick a jury and start the trial on the same day, since that would have required jurors who had been picked virtually to get to the courthouse on a moment's notice (particularly difficult in our jurisdiction, where parking is difficult and traffic is plentiful). Also, regardless of our coaching, there will always be a segment of the population with limited technological confidence and know-how. (Though I found that technological capability would notably increase when I advised people they'd need to report in person if they were unable to participate virtually.) And, yes, I did have to remind the jury panel not to take us with them to the bathroom.

Virtual jury selection might not be for everyone or for every case, but it allowed the courts to keep dockets moving and limit or avoid backlogs entirely. Even if not routinely used, virtual jury selection should be developed as part of an emergency plan, and it should continue to be one of the tools that courts have available to conduct their important work in changing circumstances.



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- <sup>1</sup> See, e.g., Ann E. Marimow & Justin Jouvenal, *Courts dramatically rethink the jury trial in the era of the coronavirus*, WASH. POST (July 31, 2020, 8:54 AM), [https://www.washingtonpost.com/local/legal-issues/jury-trials-coronavirus/2020/07/31/8c1fd784-c604-11ea-8ffe-372be8d82298\\_story.html](https://www.washingtonpost.com/local/legal-issues/jury-trials-coronavirus/2020/07/31/8c1fd784-c604-11ea-8ffe-372be8d82298_story.html) (reporting that in some jurisdictions, courts resorted to holding jury selection in high school gyms and ballrooms); Alexander Mallin & Luke Barr, *Social distanced justice? Courts restart trials, struggle to adapt to COVID-19 precautions*, ABC NEWS (June 9, 2020, 4:06 AM), <https://abcnews.go.com/Health/social-distanced-justice-courts-restart-trials-struggle-adapt/story?id=71133551> (discussing proposals to hold jury selection at convention centers, former shopping centers, and vacant movie theaters); Samantha Ketterer, *Harris County grand jury selection begins at NRG Arena*, HOUS. CHRON., <https://www.houston-chronicle.com/news/houston-texas/houston/article/Harris-County-grand-jury-selection-begins-at-NRG-15389817.php> (last modified July 6, 2020, 6:10 PM) (reporting on socially distanced jury selection held in a large arena).
- <sup>2</sup> Justin Sevier, *Procedural Justice in COVID-19 Era Civil Trials*, 71 DEPAUL L. REV. 493, 518 (2022).
- <sup>3</sup> The presidents of the Georgia Trial Lawyers Association and Georgia Defense Lawyers Association were both members of the Judicial COVID-19 Task Force established in May 2020 by the Chief Justice of the Georgia Supreme Court. JUDICIAL COVID-19 TASK FORCE, GUIDELINES, BEST PRACTICES, AND RESOURCES 5–6 (Judicial Council of Georgia & Administrative Office of the Courts ed., 2020), <https://georgiacourts.gov/wp-content/uploads/2020/08/COVID-19-Task-Force-Report-ACCEPTED-8.14.2020.pdf>. In its report, the Task Force stated that “[u]tilizing Zoom, Webex, Microsoft Teams, or another platform may be appropriate in some cases[.]” *Id.* at 33. See also Alex Seay & James Cox, *Gearing Up for the Return of Juries and Justice*, VERDICT (2020) (writing in a Georgia Trial Lawyers Association publication that “remote voir dire may be a plausible tool to move trials forward because necessary health and safety precautions complicate gathering, organizing, and moving the typical number of jurors needed to impanel a jury”).