



Use of Technology to Simplify Remote Jury Trials

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Jessica Mangrum was sworn-in as Judge of the 200th District Court of Travis County on January 1, 2021. Prior to her election as a district judge, Mangrum was a partner in the Austin office of Thompson Coe. She is board certified by the Texas Board of Legal Specialization in Construction Law. She handled personal injury, products liability, and construction cases during her 18 years of private practice. She represented design professionals, contractors, subcontractors, and owners. Her caseload included both residential and commercial construction cases. She is a past Chair of the Austin Bar Association's Construction Law Section and has spoken to design professionals, trade groups, and lawyers on topics related to construction law.

Judge Mangrum is a graduate of the University of Texas School of Law, a member of the Lloyd Lochridge Inn of Court, and a past member of the Board of Directors for the Austin Bar Association and the Austin Young Lawyers Association. She previously served on the Advisory Council for the School of Architecture at the University of Texas and on the City of Austin's Building and Standards Commission.

Use of Technology to Simplify Trials: What We Have Learned in the Pandemic Era

Focus: Preservation of the Jury System

“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state where the said crimes shall have been committed.”

Sixth Amendment to the United States Constitution

“In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of common law.”

Seventh Amendment to the United States Constitution

“The right of trial by jury shall remain inviolate. The Legislature shall pass such laws as may be needed to regulate the same, and to maintain its purity and efficiency. Provided, that the Legislature may provide for the temporary commitment, for observation and/or treatment, of mentally ill persons not charged with a criminal offense, for a period of time not to exceed ninety (90) days, by order of the County Court without the necessity of a trial by jury.”

Texas Constitution - Bill of Rights, Article 1, Section 15

“Courts may continue to use reasonable efforts to conduct proceedings remotely.

a. In criminal cases where confinement in jail or prison is a potential punishment, remote jury proceedings must not be conducted over the objection of the defendant or the prosecutor.

b. In all other cases, remote jury proceedings must not be conducted unless the court has considered on the record or in a written order any objection or motion related to proceeding with the jury proceeding at least seven days before the jury proceeding or as soon as practicable if the objection or motion is made or filed within seven days of the jury proceeding. A timely filed objection may be granted for good cause.

c. Except in a non-binding jury proceeding, a court may not permit or require a petit juror to appear remotely unless the court ensures that all potential and selected petit jurors have access to technology to participate remotely.”

Forty-Fifth Emergency Order Regarding The COVID-19 State of Disaster, Texas Supreme Court

It goes without saying that the jury system is an essential part of our American democracy. It must be preserved in the civil and criminal justice system, even in the face of a worldwide pandemic. Although people, and especially lawyers, are resistant to changes, remote

jury trials – as well as modified in-person jury trials – allow our system to continue to function. In Travis County nearly all court proceedings have been conducted remotely since April 2020. As we continue to struggle with new variants of COVID-19, let us remain resolute in our efforts to preserve and protect the jury trial.

I. Plan, Prepare, and Practice for Remote Trials

Technology has allowed the civil court system to continue to function during a worldwide pandemic that has closed or limited in-person court proceedings across the country. Technology can simplify certain aspects of court proceedings, including jury trials. For example, rather than packing up paper files and evidence and carrying them to the courthouse, an attorney need only place that data on a thumb drive or upload it to an online document repository.

While technology can facilitate court proceedings, there is a significant amount of preparation and planning necessary to ensure remote proceedings go well. In a remote trial, your witnesses must be able to log on to the proceedings – with reliable internet, a webcam, audio, and at least a basic understanding of how Zoom works. Unfortunately, attorneys do not always check with their witnesses or clients to ensure that these things are in place before proceeding with a remote trial.

The Travis County Civil Courts have had great success in conducting remote jury trials despite the extreme challenges presented during the early stages of the COVID-19 pandemic. Countless bench trials have also been conducted remotely in civil and family law cases. The rise of Zoom, in particular, has allowed attorneys to continue to put on their case – by witness testimony and documentary evidence. Does a trial conducted by Zoom look different? Yes. Does it work remarkably well? Yes, most of the time it does.

The use of YouTube channels by our Texas Courts also has made court proceedings more accessible for attorneys, the parties, and the public. If you want to know how a judge handles their docket, you can simply subscribe to that judge’s YouTube channel and follow their proceedings. Trials and hearings can be attended from the comfort of your home or office. There’s no need to drive down to the courthouse, fight traffic, or hunt for nonexistent parking.

If your client or witness is not proficient with Zoom or using a computer, provide them with a conference room where someone (in your office) can provide that assistance. People who don’t use Zoom every day will not know where the mute button is located or how to adjust their audio or video settings. They also may not know how to download files or enter breakout rooms. Many people inexperienced with Zoom won’t have an appropriate camera view or background. These are all simple things that you must include in your trial preparation in a virtual world.

If you have sent a witness a trial subpoena but have not determined whether they have home internet or a webcam, your preparation is incomplete. Some judges will not allow a witness to testify without video. Even if a witness without video capability is allowed to testify – *what weight and credibility will the fact finder give to a witness they can hear but cannot see?* As a general rule, you should avoid having anyone testify via their phone – as the person testifying won’t be able to see everyone on the screen and viewing documents is a challenge.

If you have a witness or client who will be testifying through an interpreter, please make sure the interpreter you hire is skilled with the interpreter channels on Zoom for simultaneous interpretation. It is your responsibility to have an interpreter ready to go for your trial proceedings. Again, the interpreter needs to have solid internet, webcam, and technology in place. If you haven't practiced with your client/witness and the interpreter on Zoom – it will show – and will likely slow down the proceedings and frustrate the fact finder.

Although jury trials are not being conducted at their pre-pandemic numbers, they are being conducted on a regular basis – both in-person and remotely. The fact that the courts are having trials means that cases are being moved forward, with some reaching resolution on their own – and others being decided by trial.

II. Technology: Only as Good as Your Backup System

As a “Zoom judge,” I have my internet and computer ready to go. But I also have backup internet in case mine goes out, and it has. You and your witnesses also need to have contingency plans in place so that you can navigate the technological minefield of what to do when your webcam won't turn on, when your microphone isn't working, or when there is too much audio feedback. A backup computer or laptop and a secondary source of internet is essential for you as the attorney and may be crucial for your witnesses and client. If such backup technology is not possible, be ready to call witnesses out of order if one witness is unable to participate until technology issues are resolved.

In Travis County, we have several “Zoom rooms” available at the courthouse for parties or witnesses who do not have computers or internet and need to testify or participate remotely in court proceedings. But they must be reserved *in advance* of your court date. Let the court staff know as soon as possible if you have a client or witness who will need these accommodations.

I wanted to share a few troubleshooting tips we have seen from remote proceedings:

- (1) Leaving the Zoom proceeding and reconnecting frequently solves technology issues, especially something like audio not working or webcam not connecting. Similar to your IT Department asking you if you have rebooted your machine, this is always a good place to start if you are running into issues.
- (2) Please have the Zoom application installed on your smartphone or tablet in the event there's a problem with your usual computer or laptop.
- (3) Avoid having any other Bluetooth devices in your workspace during a remote proceeding as they often cause interference or feedback.
- (4) Most cell phones have the capability to serve as a hotspot if your internet is out. Make sure you know how to switch over to your hotspot if your regular internet connection goes out or is unstable.

III. Technology: It really does make the practice of law easier

My dad has practiced law for forty-eight years now. He started practicing law when secretaries took dictation and well before the personal computer was located on every attorney's desk. When I was in high school, he taught himself to type on a typewriter – a skill that had been

reserved for secretaries when he was in school. Several years back when the Texas Supreme Court implemented the requirements for e-filing in rural counties, my dad talked about retiring from the practice of law, in part because it was just too daunting to tackle this new technology. But he did not retire. Instead, he got a scanner and learned how to e-file court documents.

In 2020, when the pandemic hit and courts started to require appearing by Zoom for hearings, he said the same thing – maybe it’s time to retire. However, we had already put into place a weekly family Zoom meeting every Saturday afternoon. By the time my dad had his first court appearance by Zoom, he was familiar enough with the technology to make it work. I share this personal example with you because lawyers are hesitant to change. The longer we practice, the more set in our ways we become. Resist this inertia – it is not good for you nor your clients.

Attorneys have an ethical obligation to keep up with the latest technology in order to competently represent clients. Once we get past the initial fears and the learning curve (and the occasional internet outage), you will understand that technology is essential to the practice of law. The pandemic has only underscored this reality.

IV. Virtual Court Decorum

The Zoom world is more relaxed than the pre-pandemic law office or courtroom. Sometimes, it is so lax as to be completely inappropriate for court, even a virtual courtroom. I have had parties and witnesses testify (or attempt to do so) while in bed in their pajamas, while driving a car, while smoking a cigarette, and while eating. And I’ve even had a lawyer quibble with me when I told him he could not chew gum in the virtual courtroom. Pro tip – quibbling with the judge about enforcement of the local rules is a waste of time. Travis County Local Rule 12 addresses courtroom decorum and gum is absolutely prohibited. It is fine for you to drink on camera (assuming that it’s water, coffee, or something non-alcoholic), but please, educate your clients and witnesses about proper decorum. Tank tops, shorts, hats, and baseball caps are a big indicator to the court that you have not prepared your witnesses for the courtroom.

Since most Texas courts are live streaming trial proceedings on YouTube, attorneys must be especially mindful to admonish their witnesses about the Rule. Once the Rule has been invoked, your witnesses need to refrain from viewing the proceedings on YouTube. I have had a witness appear in my courtroom during a trial proceeding and it was apparent the witness had been viewing the trial on YouTube. The failure of the witness to follow the Rule was disappointing, to say the least. If an objection had been made to that witness testifying, I would have strongly considered barring the testimony. Lawyers – it is important to remember that – you are responsible for ensuring that your witnesses abide by the Rule once it has been invoked. Do not forget this obligation.

I use a virtual background when I am in remote proceedings. This background looks like the courtroom and conveys formality, including the seal and flags. Your Zoom screen needs to convey to viewers both professionalism and organization. Do this by having a neatly organized office space, conference room, or by using a virtual background. Log in using your name. If you are using a shared office space, do not log on under the name of the last lawyer who used that computer or are named “Colorado Conference Room.”

V. Do This, Not That!

Just as in an in-person court proceeding, attorneys will want to make strategic decisions about their witnesses and evidence they intend to offer in a remote court proceeding. But there are some key differences for remote court proceedings. Here are some suggestions:

- (1) Minimize the amount of time you have documents on the shared screen. Zoom fatigue is a real phenomenon and something you must strive to avoid.
- (2) Use screen sharing for photos, maps, timelines, or other visuals when it will help your witness tell a story.
- (3) Pre-admit as many exhibits as you can. This saves time on evidentiary issues and bench conferences outside the presence of the jury.
- (4) If you have a lengthy document, know what page you need to get to and learn how to get there – without scrolling through the entire document. Scrolling through a document on a computer screen can cause the feeling of motion sickness, nausea, or headache for folks viewing the screen. Do not do that to your judge or jury. For the same reason, do not have a ceiling fan rotating while you are on a Zoom screen.
- (5) If a contractual provision controls – do blow up and show the fact finder that provision. But be careful not to leave the entire document up – or they may start reading other paragraphs that aren't at issue in the case. And again, leave the provision up only as long as you need to make the point with the witness, then stop your screen share so everyone can see the witness testify.
- (6) Have a regular Zoom environment that you use to connect to remote proceedings. This location should have your computer, a visually pleasing background, and everything you need as far as technology. Have a backup for your internet, webcam, and microphone. Make sure that you have appropriate lighting and that the screen is clear of any clutter.
- (7) I want to caution against having multiple parties in one room using shared video and audio. Generally, this isn't preferred as most microphones aren't strong enough to pick up multiple speakers in one location. It is easier to manage – and see and hear everyone – when each participate logs in separately with their own device.
- (8) If you are not confident in handling the technology of sharing your screen, you are certainly able to utilize a technology vendor, another attorney, or a paralegal to assist in that process. I recommend that you just say what will happen next to direct your helper as to what you need. For instance, “Now, we are going to take a look at the contract between Plaintiff and Defendant.” That is a verbal directive to put a key exhibit on the screen. I find it distracting when you are having a separate conversation with that person. Avoid this example: “Mr. Jones, can you put Exhibit 55 on the screen? Thank you, Mr. Jones.”

VI. Recommended Resources and Reading Materials

Lawyers practicing in Travis County should view and be familiar with the information from Judge Karin Crump's video series on remote jury trials: [250th District Court, Judge Karin Crump - YouTube](#)

Remote Advocacy in a nutshell by Tracy Walters McCormack

[Texas Court Live Streaming - Court Live Streaming \(txcourts.gov\)](#)

[Civil District Courts Files \(traviscountytexas.gov\)](#)

[Civil Courts COVID-19 Information \(traviscountytexas.gov\)](#)

[Virtual Jury Trial \(traviscountytexas.gov\)](#)

[remote-jury-trial-procedures-for-lawyers-and-litigants.pdf](#)