**The Jury Pool**

**A Jury of One´s Peers in the Digital Age**

Ginger Jones

Pitt Community College

ENG-112-47IN: Writing and Research in the Disciplines

Dr. Anthony Holsten

July 17, 2022

**Abstract**

The right of a criminal defendant to face their accuser is fundamental to the American legal system. “In all criminal prosecutions, the accused shall enjoy the right … to be confronted with the witnesses against him … ”. (Madison, 1789). Nowhere does it read that the confrontation between the accused and the witnesses must be face-to-face. Today, we, the people, are a hyperconnected species. Most of us allow our location to be pinpointed 24/7, afraid we will be cast adrift if we are more than an arm’s reach away from our electronic devices. The global pandemic allowed us to evolve to electronic classrooms, offices, and worship services. The next step in our evolution into the digital age is a rehaul of our criminal justice system. More than just the pre-trial and post-trial administrative tasks between defendants, their legal representation, and the courthouse personnel will evolve digitally. The citizens called to participate in adjudicating their peers will now be able to do so from the comfort of their homes. The digital jury pool is America’s new frontier.

During the January 6th hearings, Americans watched Ivanka Trump testify remotely. “One popular theory out there now is that Ivanka Trump, whose testimony has been damaging to her father, may have been a CGI avatar.” (Ryan Lizza, 2022) The question is not, “Can America’s justice system evolve into remote criminal trials?” but, “Should America’s justice system evolve into remote criminal trials?” People working in the North Carolina Court System lean toward virtual court trials because they believe the process is streamlined and thus more cost-effective. (Sarah E. Duhart Clarke, 2021) Streamlined and more cost-effective are familiar concepts in America. In 2021, teachers in Scranton, PA; Mercy Hospital workers in Buffalo, NY; John Deere factory workers across the Midwest; Amazon and Starbucks employees; the labor unions from coast to coast. (Bradbury, 2021) We go on strike to ensure that we receive our rightful due despite our employers’ desire to streamline us into working-class poverty. We cannot allow our complacency to be the downfall of our criminal justice system. However, we also cannot calcify with outdated thinking we extol as tradition, as American, as Constitutional.

*Keywords: Jury, Remote, Trial, Due, Legal, Court*

**The Jury Pool: A Jury of One´s Peers in the Digital Age**

The world's largest social experiment is The United States of America, with its foundation of democracy for all. One of the cornerstones of that foundation is a trial by a jury of one's peers. In America, even complex, convoluted trials worth millions of dollars can be decided by a jury rather than a panel of experienced judges. When a pandemic swept across the land, we could not allow the defendants, who could not afford bail or were denied bail, to languish in jail. We needed to push onward with another one of our democratic foundations, the right to a speedy trial. We pushed technology into our courtrooms and performed all manner of pre-trial and post-trial work.

Nevertheless, the system practically halted as our courts could not impanel juries due to necessary travel restrictions. Some of the country's larger court systems used technology to clear the backlog. They did more than allow some testimonies to be given by videoconference. These court systems began to select juries remotely. The judges in these forward-thinking systems began to impanel juries remotely. Though it may seem like disembodied faces on a screen, it truly is a jury of one's peers.

There is a school of thought that it does not matter how thorough a voir dire attorneys give the jury pool; a random jury will render the same decision as a carefully cultivated one. (Young, 2022) However, there is a body of evidence emerging about jurists allowed to participate from the comfort and safety of their homes, becoming more engaged in the process of our justice system. (Jingnan, 2022) It is more than participating from the comfort and security of one's home. The lack of stress from an unfamiliar commute, from wearing Sunday best, answering questions during voir dire on the record, and sitting with a group of strangers who are now their team members emboldens the citizenry required to report for jury duty. Impaneling juries remotely is a small percentage of our jury trials in this country. However, if jurists are becoming more engaged with the process because the stressors of in-person service are removed, perhaps we should take a hard look at our judicial system and overhaul it into the 21st-century mindset.

**Though no Luddite, I fear our judiciary may see what they want. Are people more engaged with jury service because they are more comfortable at home? Educators do not believe this to be true. Educators see a marked loss of engagement and ability in hybrid education. "Distractions, technical glitches, and the many other pitfalls of online education made it far less effective than in-person school." (Kane, 2022) Zoom fatigue is not limited to an educational environment. There is nothing to stop a juror from disengaging from the process of jury service if selected. Conversely, and arguably worse, there is nothing to stop a juror from "…researching issues arising in testimony with the same technology being used to watch the trial..." (Hamilton, 2021)**

**Method**

I read many articles about remote trials. I sorted through the charts provided by the UNC School of Government (Smith, 2021). I watched a series of videos by the Travis County, TX judiciary relating to virtual jury trials. (Travis County, Texas, 2022). The only thing that seems to hold true across the board is we are in the nascent stages of virtual trial proceedings becoming more of a standard than an exception. Though by no means universally embraced, there is a profit-loss argument in which virtual proceedings are packaged. It is more profitable for the government if defendants who cannot afford bail or who have been denied bail, remain at the jailhouse for their testimonies rather than transported back and forth to the courthouse. There is an argument for speedier justice by trying remotely. Attorneys may sit in their offices rather than travel from courthouse to courthouse to serve their clients. This alleviates the scheduling nightmares that plague clerks of courts everywhere. There is a persuasive argument for virtual trials to ensure the safety of law enforcement, courthouse staff, and private citizens. If defendants are corralled away from law abiding citizens, it is safer for everyone. The justice system seems to lean less toward innocent until proven guilty and more toward comfort and safety, profit not loss, and guilty else the defendants would have made bail.

**Results**

I understand the appeal of remote trials, especially a complicated civil trial that could take months to process. We are not there yet as a nation. It is not the digital divide that concerns me. It is the lack of good faith. Human beings are not commodities. America already incarcerates more people per capita than any other country in the world. Every state in the United States locks up more people per capita than any other democratic country. (Emily Widra, 2021) Our legislators run on a tough-on-crime platform. Our legislators want stricter, more formidable, higher bonds. Too many of our district attorneys have a terrible habit of overcharging. We will dehumanize the process further by trying remotely. The justice system is not a game of stats, nor should it become a profit center for the government. The Uvalde school shooting highlighted a prevalent misconception in the law enforcement community that they serve at their own discretion. "The Slow Hustle" highlights that if law enforcement will turn on one of its own with deadly consequences, the chances are slim that regular citizens will receive a fair shake. (Sohn, 2021).

I tried and failed to knit the threads into something resembling a blanket to cover the questions about the ability for defendants to receive fair and equal treatment from the dissociative nature of remote screens. I am horrified by the genuine plight of people being transported from the jail cell to the prison cell with no chance to breathe in between. America does not require its citizens to vote, but the country does require its citizens to participate in the judicial process. Jury service is not a vacation destination. Jury service is, as it should be, serious work that rightfully requires us to give our full, complete, and unwavering attention. Participating in the process from home, the coffee shop, or the beach simply will not do. We need to do right by our fellow Americans by contributing fully to the process. The Contemporary English Version of the Bible translates Matthew 7:12, "Treat others as you want them to treat you." I want them in the courthouse, paying attention to everything as it is presented.

# Works Cited

Bradbury, A. (2021, December 12). *2021 Year In Review: The Only Way Out is Through.* Retrieved from Labor Notes: https://labornotes.org/2021/12/2021-year-review-only-way-out-through

Emily Widra, T. H. (2021, September). *States of Incarceration: The Global Context 2021*. Retrieved from Prison Policy Initiative: https://www.prisonpolicy.org/global/2021.html

Hamilton, P. C. (2021, Feb 26). *The Practical and Constitutional Issues with Virtual Jury Trials in Criminal Cases.* Retrieved from American Bar Association: https://www.americanbar.org/groups/litigation/committees/criminal/articles/2021/spring2021-practical-and-constitutional-issues-with-virtual-jury-trials-in-criminal-cases/

Jingnan, H. (2022, March 18). *To try or not to try — remotely. As jury trials move online, courts see pros and cons.* Retrieved from NPR: https://www.npr.org/2022/03/18/1086711379/as-jury-trials-move-online-courts-see-pros-and-cons#:~:text=The%20court%20has%20conducted%20about,as%20remote%20civil%20jury%20trials.

Kane, T. (2022, May 22). *Kids Are Far, Far Behind in School.* Retrieved from The Atlantic: https://www.theatlantic.com/ideas/archive/2022/05/schools-learning-loss-remote-covid-education/629938/

Madison, J. (1789, June 8). *Constitution Annotated.* Retrieved from Congress.Gove: https://constitution.congress.gov/constitution/amendment-6/

Ryan Lizza, E. D. (2022, June 18). *Playbook.* Retrieved from Politico: https://www.politico.com/newsletters/playbook/2022/06/18/exclusive-the-words-luttig-wants-to-be-remembered-00040701

Sarah E. Duhart Clarke, J. S. (2021). *Virtual Court Proceedings In North Carolina Adapting to a Global Pandemic.* Chapel Hill: UNC School of Government Criminal Justice Lab.

Smith, J. (2021, March 22). *Virtual Court Proceedings—North Carolina Court Actors Weigh In.* Retrieved from North Carolina Criminal Law: A UNC School of Government Blog: https://nccriminallaw.sog.unc.edu/virtual-court-proceedings-north-carolina-court-actors-weigh-in/

Sohn, S. (Director). (2021). *The Slow Hustle* [Motion Picture].

Travis County, Texas. (2022). *Virtual Jury Trial*. Retrieved from TravisCountyTX.gov: https://www.traviscountytx.gov/courts/civil/virtual-jury-trial

Young, C. (2022, July 6). Dr. (G. Jones, Interviewer)