

VERDICT

**Improvise,
Adapt,
Overcome:
Practicing Law
in a Pandemic**

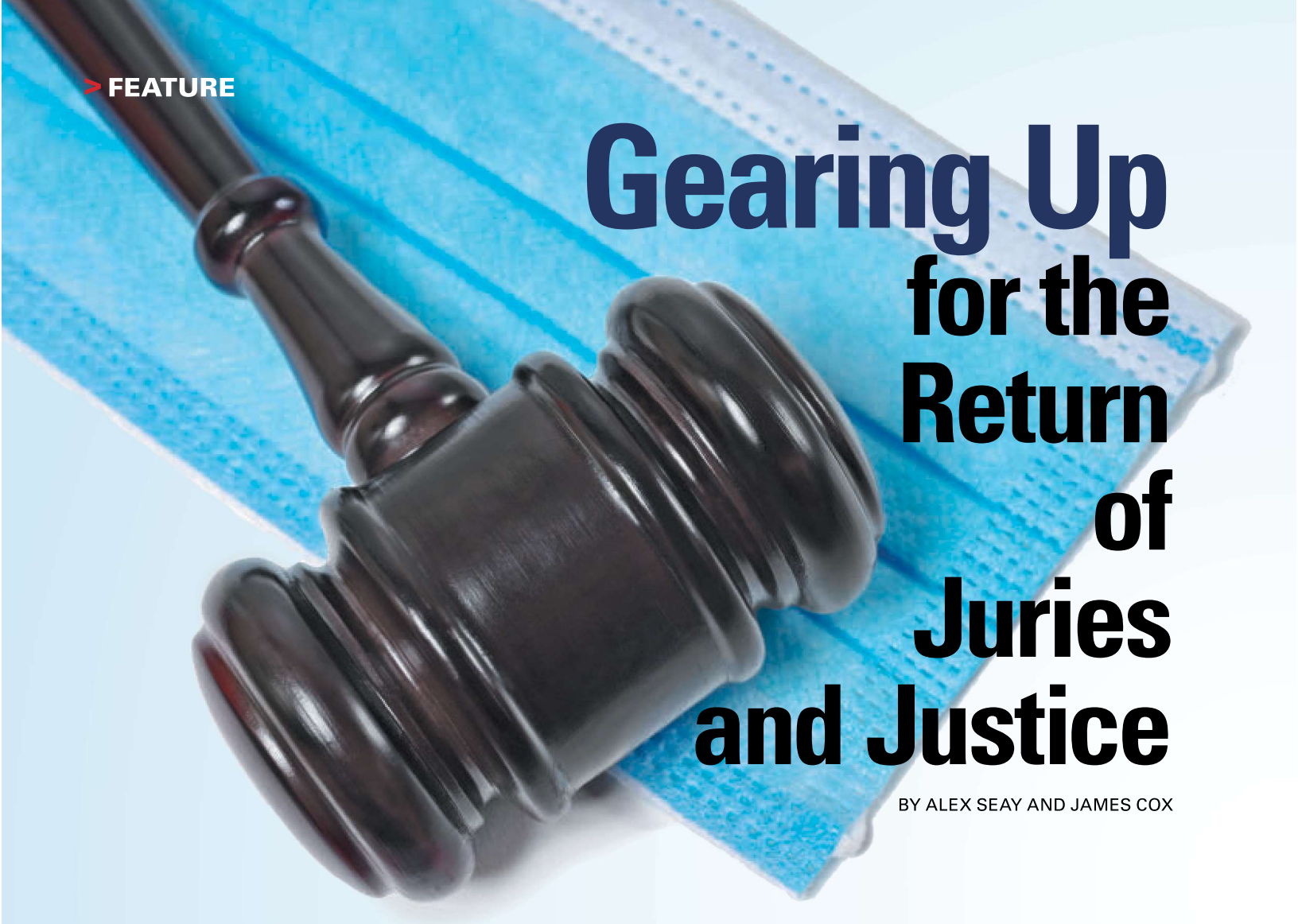
**THE NEW
NORMAL:**

**Lawyering
in the
Age of
COVID-19**

**Techniques for
Virtual
Depositions**

**Gearing Up for the
Return of Juries and Justice**

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Gearing Up for the Return of Juries and Justice

BY ALEX SEAY AND JAMES COX

We are over seven months into the COVID-19 Statewide Judicial Emergency, but on October 10, 2020

Chief Harold Justice Melton declared “the blanket suspension of jury trials that has been in place since the March 14 Order is ended effective immediately.” The pandemic has wrought months of suspended deadlines, hardship, and changes to how firms practice law. It has led to backlogs of triable cases with no outlet for resolution. Finally, though, the surest vehicle for change and progress has returned. This return to business as usual will be anything but normal, seeing as we are still in the midst of the pandemic. Jury trials during COVID-19 will bring a new set of challenges and rewards along the path of zealously representing the wrongfully injured and hurt.

This article is intended to equip each reader with the information and tools necessary to navigate our new world.

NUTS AND BOLTS OF CONDUCTING COVID-19 JURY TRIALS

Before the October 10 Order ending the blanket suspension of jury trials, judicial officials have been preparing for the return of jury trials since at least September 10. The chief judge of each superior court in Georgia has been actively putting together local committees to develop plans for resuming jury trials for at least the last month. Central to this planning is the ongoing development of operating guidelines for conducting jury trials unique to each county. Those county specific guidelines must be submitted to the Administrative Office of the Courts before the jury trial process can resume. For the general public’s viewing, finalized

guidelines, as they are submitted, are available at: <https://georgiacourts.gov/covid-19-court-operating-guidelines/>. Lawyers should expect to frequently check that site for updated guidelines by the circuit and court in which they have upcoming trials. In addition to being online, those guidelines will also be available at local courthouses.

To assist with creating those guidelines, local committees will rely heavily on the “Georgia Court Reopening Guide” and more recent “Guidance for Local Committees on Resuming Jury Trials.” The Reopening Guide breaks down specific measures courts should take to control infection, maintain healthy and safe courtrooms, and protect the health and safety of employees and jurors while participating in court functions. The Resuming Jury Trials guidance offers considerations for each step of the jury trial process from scheduling trials, summoning jurors, and conducting voir

dire through presenting evidence and managing witnesses.

One of the biggest takeaways from both documents is how different impaneling a jury will look.

Assuming it is done in person, it is likely the process will be broken up into smaller groups of jurors. Jurors will likely wear face masks or transparent face shields throughout the process and be seated far apart in the gallery rather than the jury box. Beyond all of that, there is the alternative that voir dire could occur remotely through virtual video conferencing technology. To date, there has been heavy opposition to remote voir dire because it may limit attorneys from assessing the emotions and disposition of a prospective juror. However, 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. For better or worse, impaneling juries over the first few months for civil trials will likely involve significant experimentation, flexibility, and creativity to make everything work.

Another takeaway from both documents is the prominent role that technology will play in the new jury trial process. If it was not already, it is now paramount that we all familiarize ourselves with presenting our cases through digital monitors or technological mediums. Jurors are likely to be spread throughout the entire gallery. Thus, the only feasible way to present evidence will be through large, electronic displays. Health and safety concerns likely preclude continuing the tried and true practice of publishing exhibits to the jury by merely handing them the evidence. Instead, lawyers will need to present evidence in such a way that jurors on the first and last rows of the courtroom gallery will be able to appreciate and understand it.

LESSONS FROM OTHER JURISDICTIONS

As we begin conducting jury trials in Georgia, we can look to the jury trials that have already been completed in several of our neighboring states for guidance. For instance, David Pitre obtained a 1.29-million-dollar jury verdict in Mississippi in early September. The

case involved a hit and run collision caused by a man driving a company van. Going into the trial, there was serious concern that a mistrial could occur because of someone testing positive for the coronavirus during the trial. However, the judge effectively ran a tight ship regarding the health and safety procedures, and no one ended up testing positive for the coronavirus during the process.

Pitre had several additional positive thoughts on the trial. Voir dire went smoothly and Pitre said he was pleasantly surprised with the number of potential jurors that reported for duty. Pitre and his team used face shields throughout the trial and found them highly effective while the defense counsel mainly relied on face masks. All evidence was presented electronically to the jury because they were spread out in the gallery of the courtroom. One large benefit for the trial was that it was conducted in a large courtroom recently renovated after Hurricane Katrina. Pitre noted it was not an easy decision to go forward with a trial but his result demonstrates proper protocols work and effective advocacy is still very much alive.

Since the start of the pandemic, at least two civil jury trials have been completed in Florida. In one, a completely remote jury trial returned a \$354,833 verdict for the plaintiff in early August. The one-day, damages-only trial over a night-club assault had jurors considering its merits from the comfort of their home. Before the trial, two months of mock jury selections and trials ironed out issues that could arise from an all-virtual format. Jurors were given a list of rules specific to a remote trial that included: (1) they were to treat the trial just as if it was happening in the courthouse, (2) they could not leave their seats in front of their devices when court was in session, (3) they could not speak to anyone, in person or with a device, while court was in session, (4) no Zoom chat messages were permitted, except to court staff who were assisting the jurors, and (5) they were required to focus their attention on the video and audio coming from the court. Contrary to any concerns, attorneys found in both Florida trials that jurors appeared ready to serve and ready to work.

Other courts will also be resuming jury trials in the near future. South Carolina resumed normal scheduling and docket management on September 21, and on September 25 initiated all summary courts putting together "COVID-19 Jury Trial Plans" for resuming jury trials similar to those being put together in Georgia. The moratorium on jury trials in Alabama ended September 14, after not being extended in the latest court order.

ADDITIONAL CONSIDERATIONS FOR COVID-19 JURY TRIALS

There is no substitute for jury trials when it comes to resolving cases and promoting justice. However, that vehicle has been halted for the last seven months. Despite that halt, countless attorneys and GTLA members have continued nonstop to advocate and work on behalf of the wrongfully injured and hurt members of our society. There is no better time for jury trials to resume than the present. The risk of mistrials and the difficulties new health and safety protocols present mirror the difficulties in bringing any case where we carry the burden of proof. Moreover, there is no end in sight to our state's current condition and the coronavirus pandemic. Therefore, it is time to begin navigating this new world and find the justice in it that we have always found before for our clients and the public at large. ●

ABOUT THE AUTHORS



Alex Seay practices in Atlanta, Georgia at Bird Law Group. Her practice focuses primarily on medical malpractice and other catastrophic injury cases. She also represents taxing authorities nationally against online travel companies. She is a graduate of the GTLA LEAD Program and serves on the New Lawyer's Division Board. She can be reached at aes@birdlawgroup.com or 404-873-4696.



James Cox is an Associate at Conley Griggs Partin LLP in Atlanta. His practice primarily focuses on general negligence, medical malpractice, toxic torts, products liability, and class action litigation. James can be reached at james@conleygriggs.com.