

Trying a Case During COVID

A Resource for Prosecutors



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SHERRI BEVAN WALSH

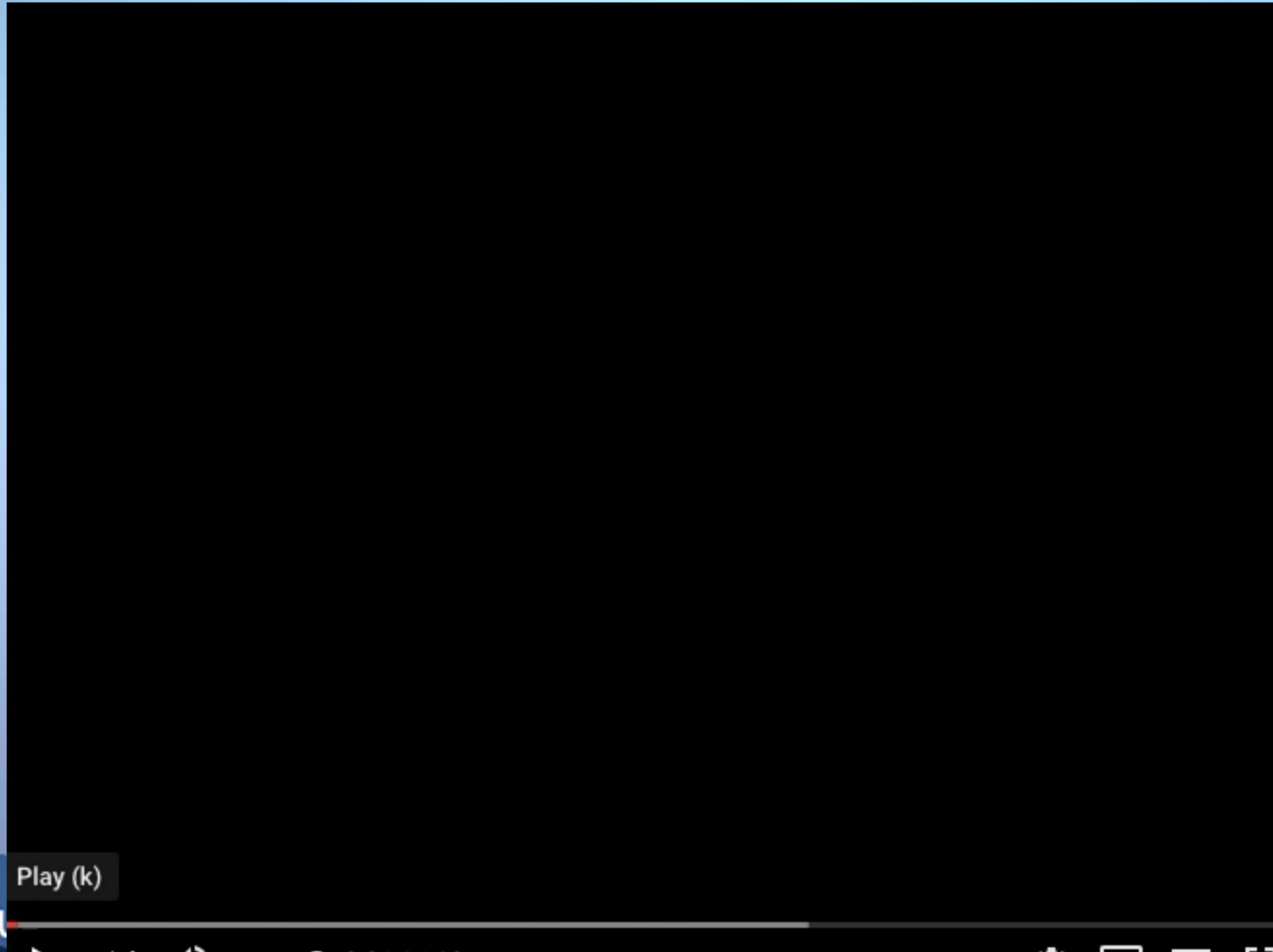
“This is a Crisis.” - Ohio Gov. Mike Dewine

- We all need to rely on our collective experience as well as our instincts
- BUT, now may be the time we have to temporarily disregard what we know and how we usually practice
- This is a CRISIS, so crisis rules apply



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Crisis Rules



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A Crisis Necessitates Change

- We must embrace changes in how we try our cases
- Our job is to administer justice and help victims; but we cannot do that if COVID gets in the way
- So our number one job is to stay safe WHILE we do our jobs



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Prioritize Your Safety First

If there's ever an airplane emergency, I would first secure my own oxygen mask so I could more efficiently hide yours.



someecards
user card



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Preparing Prior to Trial

- Utilize courtroom partner or get a backup
- Self-care plan for trial (rest, water, breaks, stress, etc.)
- Plan for Illness/quarantine
- Why? Quarantine could delay trial for days or weeks; COVID tests take time; you want to avoid a potential mistrial
- State v. Camp, 1993 WL 364955 (5th Dist.): Continuance caused by prosecutor's illness reasonable under 2945.72(H)



STAY SAFE!



(This picture went viral - an actual store customer who said masks made it hard to breathe, so this was much easier)



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Safety First

- Consider all safety measures you take inside and outside of the office
- Good hygiene, social distance, wear a mask, limit unnecessary travel, don't take risks
- We all have to sacrifice until this is over



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MAKE A DIFFERENCE DURING THE COVID-19 PANDEMIC



Wash Your Hands

Wear a Mask and Avoid Crowds



Maintain distance

Save PPE for Those on the Front Lines

The general public *should* wear cloth face coverings



Follow Food Safety Guidelines

Donate Blood and Plasma



Report Fraudulent COVID-19 Tests, Vaccines and Treatments



Safety Measures Must Be Applied to the Courtroom!



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Safety First

- Distancing
- Face Coverings
- Plexiglass Barriers
- Cleaning before and after witnesses
- Cleaning throughout the day
- Monitoring health of all persons in the courtroom
- Hand Sanitizer



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Courtroom Layout

- Get familiar with your courtroom IN ADVANCE
- Plexiglass, juror arrangement, gallery, party seating
- Who enforces safety measures? Discuss with your judge in advance
- Supervisor/Health Department contact information



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Know Your Judge's Rules



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Know Courtroom Rules

- Who is required to wear a mask and when?
- How many people can take a break at the same time?
- How is social distancing enforced in the courtroom? In the gallery?
- Who enforces the rules?



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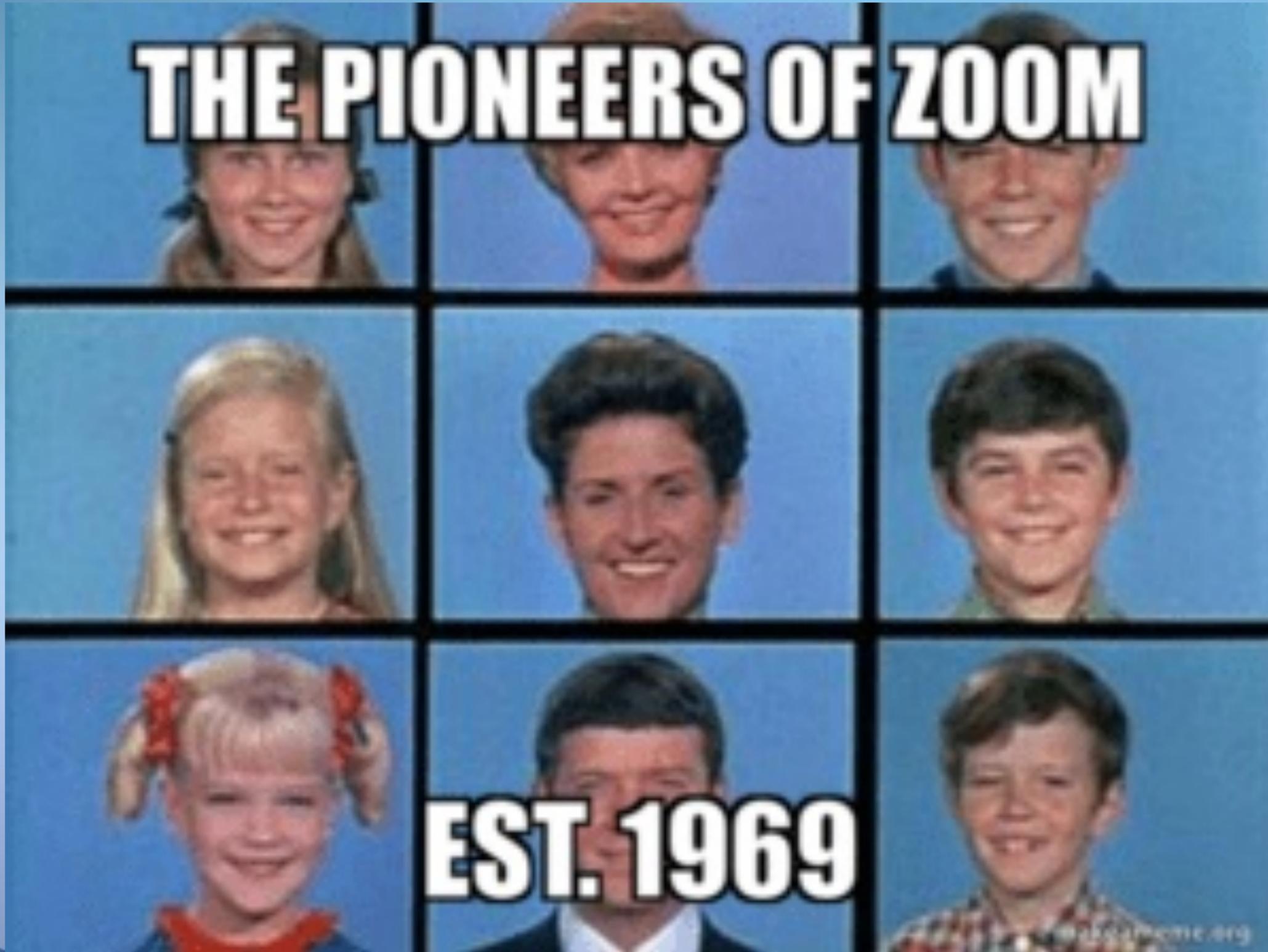
Control the Courtroom

- The PROSECUTOR controls the courtroom
- Judge has no stake in the outcome—It's YOUR CASE
- Defense attorney has NO obligation to pursue justice or even truth—A COVID trial plays right into their hands of muddying the waters; if the jury doesn't like the process, they'll take it out on your case



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THE PIONEERS OF ZOOM



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Courtroom Technology/Media

- See what's new and try it out in advance
- Zoom, RingCentral, Facetime, etc.
- Learn how to deal with multiple video screens in courtroom
- Presenting digital evidence
- Text co-counsel and parties as an alternative



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Layout/Procedural Issues

- ID masked Defendant?
- Sound checks: make sure recordings are loud enough for everyone to hear
- Have court obtain consent of the parties to the setup/layout and put that consent on the record
- If Defense objects, make sure their concerns are put on the record
- Handling exhibits, sidebars, courtroom cleaning, social distancing



Project Professionalism

- Courtroom will not look the same
- The PROSECUTOR projects professionalism
- Safety protocols, technology, layout, trial procedures, etc.
- Look like you know what you're doing



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'I Don't Blame You, Man': South Florida Lawyer Turns Heads by Wearing Full Hazmat Suit to Federal Court

"Is there something we should be worrying about?" two police officers who pulled up, rolled down their car window and asked the Miami lawyer.

By Raychel Lean • July 06, 2020 at 02:13 PM



Miami attorney Samuel J. Rabin Jr. dressed for federal court in the time of COVID-19. Courtesy photo.

When Miami criminal defense attorney Samuel J. Rabin Jr. got out of his car and began walking down the street in a full hazmat suit, gloves, respirator mask and face shield, two police officers pulled up, rolled down their car window and said,

Project Confidence in New Safety Procedures

- For most prosecutors, it's been months since trying a case
- Court staff, jurors, and witnesses are going to be anxious
- Prosecutor should foster a safe environment by following all PPE rules properly (mask fidgeting or wearing loosely, not social distancing, etc.)
- Demonstrate safety through actions, even if it's gently correcting others. This will garner trust and let jurors know you CARE about safety



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Keep It Simple

- Rethink Business as Usual
- NOBODY'S gonna want to be there
- Pare down your witness list to essentials
- Get to the point on direct
- Keep things moving



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THE GETTYSBURG ADDRESS

November 19, 1863

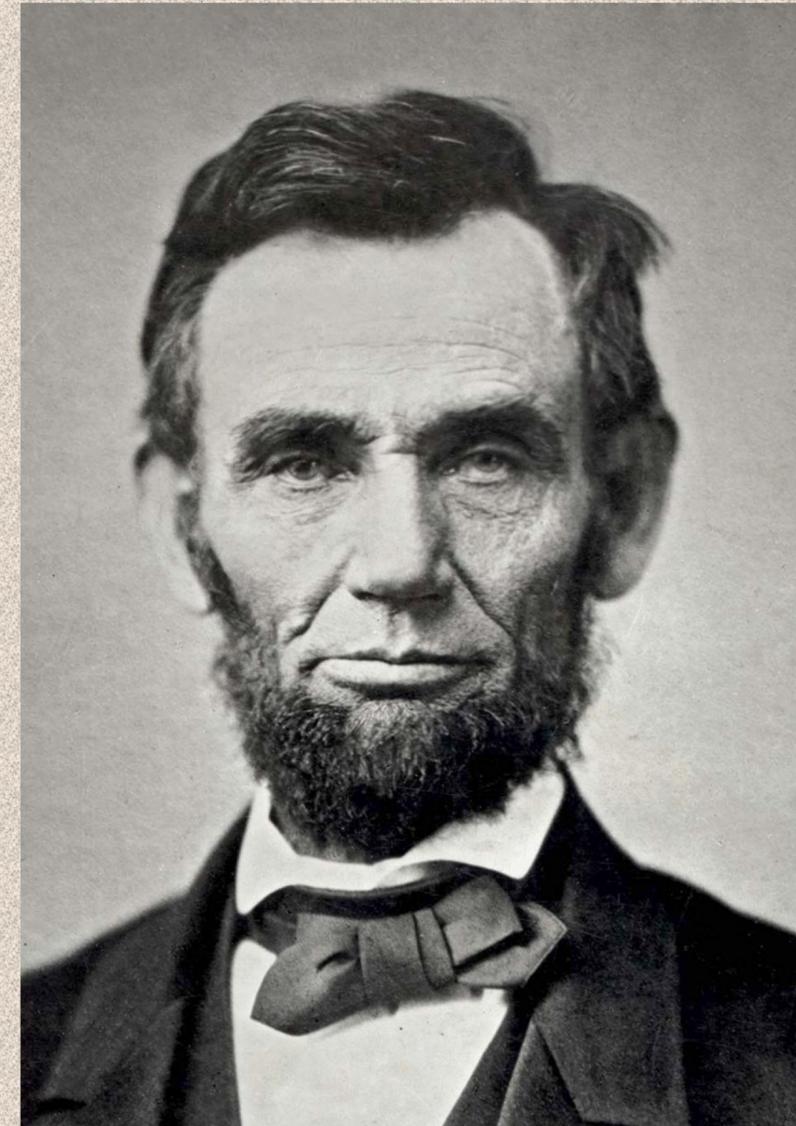
At the Dedication of the Soldiers' National Cemetery in Gettysburg, Pennsylvania:

Four score and seven years ago our fathers brought forth on this continent, a new nation, conceived in Liberty, and dedicated to the proposition that all men are created equal.

Now we are engaged in a great civil war, testing whether that nation, or any nation so conceived and so dedicated, can long endure. We are met on a great battle-field of that war. We have come to dedicate a portion of that field, as a final resting place for those who here gave their lives that that nation might live. It is altogether fitting and proper that we should do this.

But, in a larger sense, we can not dedicate – we can not consecrate – we can not hallow – this ground. The brave men, living and dead, who struggled here, have consecrated it, far above our poor power to add or detract. The world will little note, nor long remember what we say here, but it can never forget what they did here. It is for us the living, rather, to be dedicated here to the unfinished work which they who fought here have thus far so nobly advanced. It is rather for us to be here dedicated to the great task remaining before us – that from these honored dead we take increased devotion to that cause for which they gave the last full measure of devotion – that we here highly resolve that these dead shall not have died in vain – that this nation, under God, shall have a new birth of freedom – and that government of the people, by the people, for the people, shall not perish from the earth.

Abraham Lincoln



Brevity

One of the greatest speeches ever - 271 words - 3 minutes to give



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Trying Your Case

- Be brief like Lincoln!
- Crisis rules apply, so rethink business as usual
- Only call necessary witnesses (why call three first responders if one will suffice?)
- Only ask necessary questions - jurors will not tolerate needless delays
- Keep things moving - have technology and witnesses ready



Trying Your Case

- Consider extra help in the courtroom for technology and exhibits
- Speak up! Use microphones when needed and remember some jurors may be further away or behind you in the gallery
- Masks muffle voices, so keep in mind for prosecutors and witnesses



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Preparing Witnesses

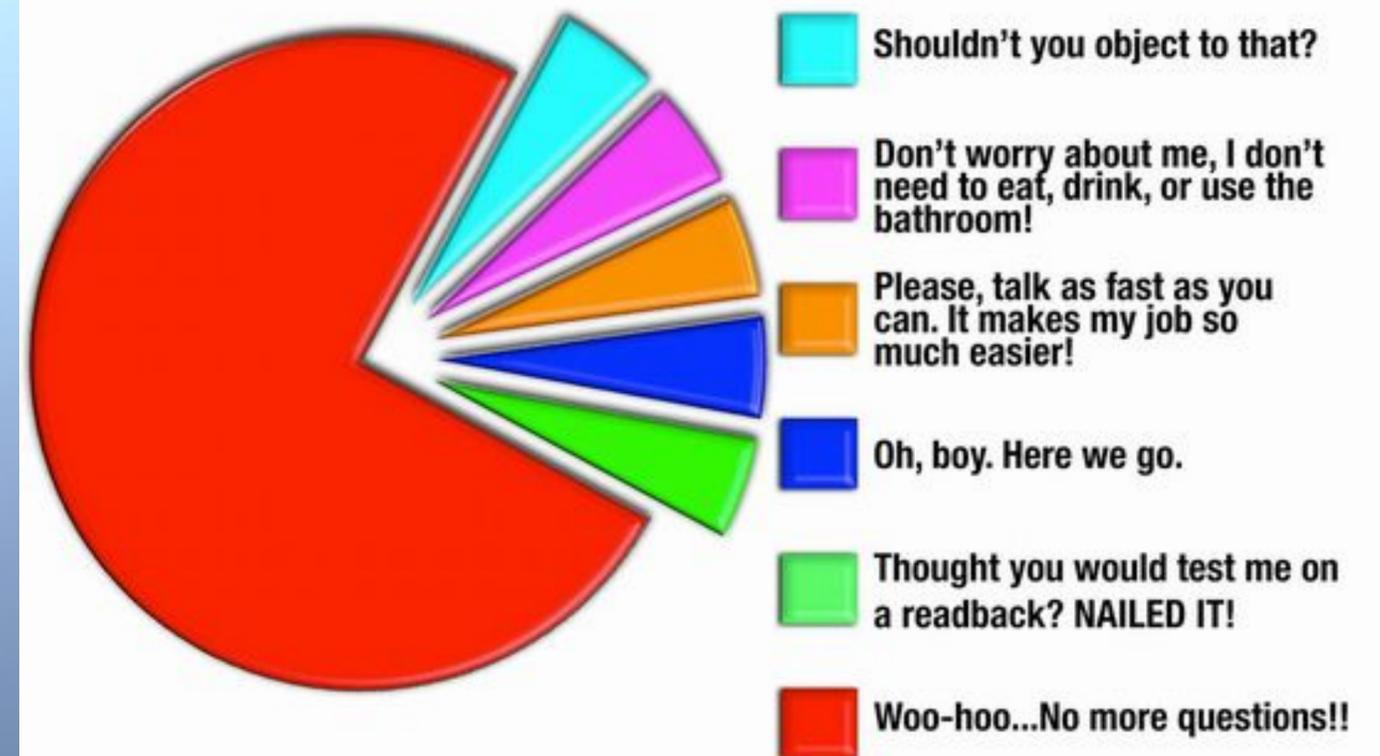
- Communicate with witnesses prior to trial
- When masks are required
- Plexiglass and sanitization
- Where parties, jurors, and lawyers will be
- Text witnesses when ready - prevents waiting around the courthouse



Make a Record

- Describe occurrences in the courtroom more than normal
- "For the record, the witness is wearing a mask"
- How a witness reacts to a question if their face is obscured (shifting in seat, raising eyebrows, etc.)

Things Court Reporters want to say on the record but can't!



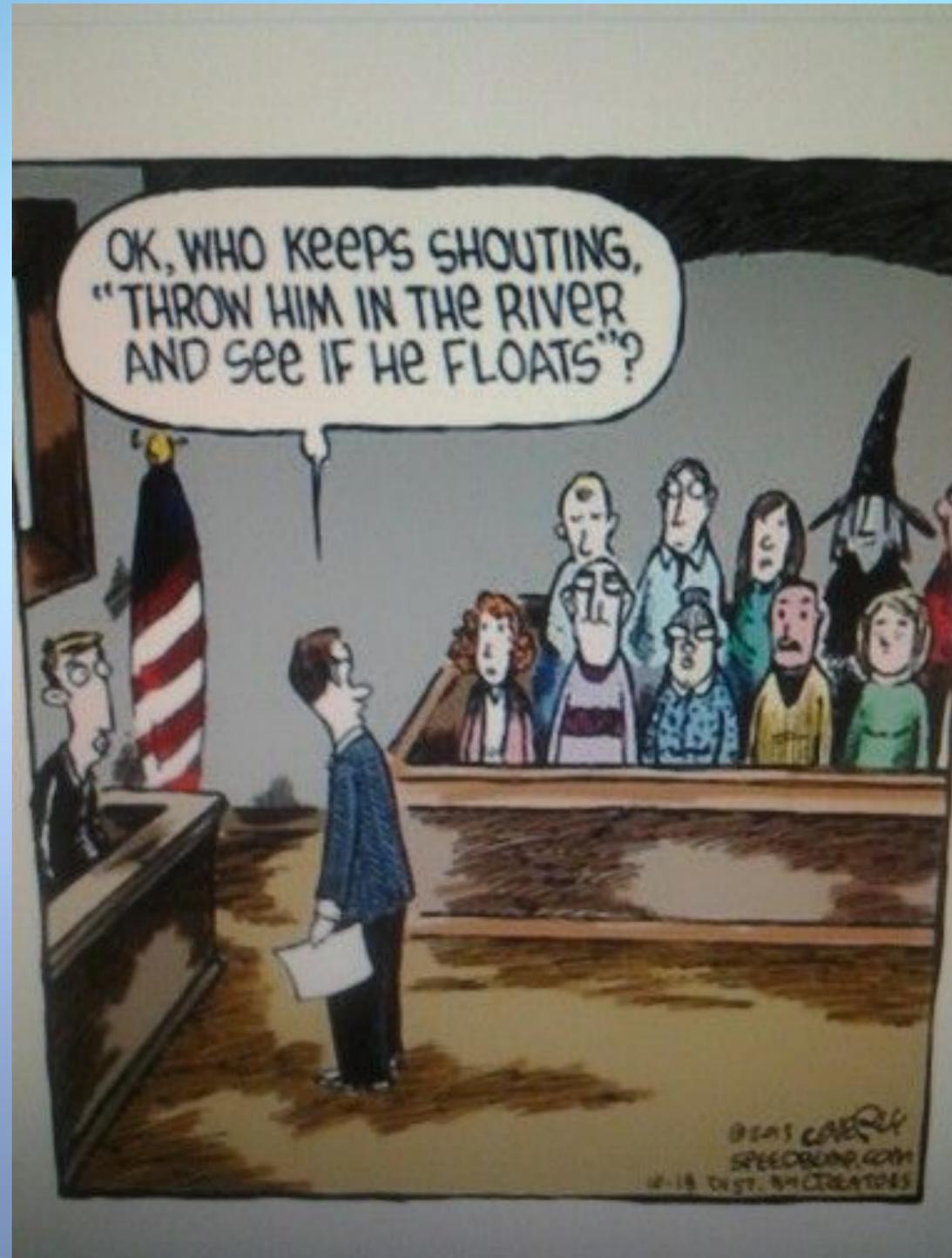
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COVID Voir Dire

- Do it - At least some voir dire should cover COVID
- Questionnaires
- Establish juror views on COVID
- Inform jurors about safety measures BEFORE deciding
- Give scenarios/Clear the road/Prepare the jury



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COVID Voir Dire

- Challenge/dismiss jurors who don't feel safe or don't want to be there
- Once jurors are aware of the safety procedures and what they're getting into, ask them about it. Are they ok with the layout, procedures, rules, protocols?
- Will they feel safe? Distracted?
- Breaks, food/drink in courtroom, speak up if they can't hear, etc.



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In the end...

"The dogmas of the quiet past are inadequate to the stormy present. The occasion is piled high with difficulty, and we must rise with the occasion. As our case is new, we must think anew and act anew. We must disenthrall ourselves, and then we shall save our country."

-Abraham Lincoln



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**KEEP
CALM
AND
STAY
6 FEET
AWAY**



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