



MURDER BY TIGER, TRIAL BY ZOOM

A civil jury trial in the age of COVID-19

McFetridge Inn of Court, October 2020

United States Constitution, Amendment VII

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 the common law.

Jury Selection and Service Act of 1968

It is the policy of the United States that all litigants in Federal courts entitled to trial by jury shall have **the right to grand and petit juries selected at random from a fair cross section of the community in the district or division wherein the court convenes.** It is further the policy of the United States that all citizens shall have the opportunity to be considered for service on grand and petit juries in the district courts of the United States, and shall have an obligation to serve as jurors when summoned for that purpose.

Federal Rule of Civil Procedure 77(b)

(b) Place for Trial and Other Proceedings. Every trial on the merits **must be conducted in open court and, so far as convenient, in a regular courtroom.** Any other act or proceeding may be done or conducted by a judge in chambers, without the attendance of the clerk or other court official, and anywhere inside or outside the district. **But no hearing—other than one ex parte—may be conducted outside the district unless all the affected parties consent.**

Federal Rule of Civil Procedure 47(a)

(a) Examining Jurors. The court **may permit the parties or their attorneys to examine prospective jurors or may itself do so.** If the court examines the jurors, it must permit the parties or their attorneys to make any further inquiry it considers proper, or must itself ask any of their additional questions it considers proper.

Pandemic Tech Best Practices: Ensuring Access

- **Pre-configured tablets** could be distributed to potential jurors, pre-loaded with Zoom or another remote access technology.
 - This approach has been taken in Travis County, TX, Precinct 5, beginning in August 2020. See <https://news.bloomberglaw.com/us-law-week/virtual-criminal-jury-trial-getting-texas-test-ipads-included-1>
- Each potential juror should receive **technical training**, and have their devices tested, before participating in voir dire.
 - Court IT staff can administer the training and testing for each panel in a videoconference “waiting room” before that panel appears before the judge and lawyers for voir dire.
 - This approach was taken in Duval County, FL. See <https://pages.cvn.com/duval-county-florida-remote-trial-program>
- Each potential juror should have access to a **hotline** where they can report technical issues to the Court in real-time

Federal Rule of Evidence 901

(a) In General. To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce **evidence sufficient to support a finding that the item is what the proponent claims it is.**

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1975 ADVISORY COMMITTEE NOTE

Example (6). The cases are in agreement that **a mere assertion of his identity by a person talking on the telephone is not sufficient evidence of the authenticity** of the conversation and that additional evidence of his identity is required.

Federal Rule of Evidence 403

The court may exclude relevant evidence **if its probative value is substantially outweighed by a danger** of one or more of the following: unfair prejudice, **confusing the issues, misleading the jury**, undue delay, wasting time, or needlessly presenting cumulative evidence.

Federal Rule of Civil Procedure 32(a)(4)

(4) *Unavailable Witness.* A party may use for any purpose the deposition of a witness, whether or not a party, if the court finds:

(A) that the witness is dead;

(B) that the witness is more than 100 miles from the place of hearing or trial or is outside the United States, unless it appears that the witness's absence was procured by the party offering the deposition;

(C) that the witness cannot attend or testify because of age, **illness**, infirmity, or **imprisonment**;

(D) that the party offering the deposition could not procure the witness's attendance by subpoena; or

(E) on motion and notice, that exceptional circumstances make it desirable—in the interest of justice and with due regard to the importance of live testimony in open court—to permit the deposition to be used.

It's true. Tigers get COVID-19.



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USDA Statement on the Confirmation of COVID-19 in a Tiger in New York

Last Modified: May 13, 2020

Contact:
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(Washington, D.C. April 5, 2020) – The United States Department of Agriculture's (USDA) National Veterinary Services Laboratories has confirmed SARS-CoV-2 (the virus that causes COVID-19 in humans) in one tiger at a zoo in New York. This is the first instance of a tiger being infected with COVID-19. Samples from this tiger were taken and tested after several lions and tigers at the zoo showed symptoms of respiratory illness.

- Source: United States Department of Agriculture, https://www.aphis.usda.gov/aphis/newsroom/news/sa_by_date/sa-2020/ny-zoo-covid-19