



# Guest notebook: Lawyers adapting to litigation changes in the age of Covid-19

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Like everyone else, lawyers — who are not necessarily known for their flexibility — have adapted to their own version of the “new normal” precipitated by the Covid-19 pandemic. It turns out that the new normal is at least in some respects not all bad and has actually fostered some welcome professional advances. The future remains uncertain, though, particularly with respect to the resumption of jury trials.

Necessity is the mother of invention, and “invention” is what Covid-19 has brought to the legal profession. With the onset of social distancing protocols, the face-to-face “interactions” that have defined the legal profession for generations — jury trials, depositions, hearings, meetings — were no longer an option.

Led in large part by our rather innovative judicial system, lawyers learned that much of what they do can be accomplished without leaving home, much less getting on a plane. It turns out, for example, that virtual hearings via Zoom are efficient and often just as productive as in-person hearings. And, while conducting remote depositions by video is not always a fair substitute for the “real deal,” in the right case, they too can be efficient and productive.

While innovations like these have kept cases moving and law practices active, no one seems to have devised a reliable virtual substitute for jury trials — which are presently set to resume by mid-September in Alabama state courts. Time will tell whether a constitutionally sound substitute even exists — or for that matter will even be necessary. What is clear is that there will be plenty of criminal and civil cases on deck whenever jury trials resume.

The lack of a virtual substitute for jury trials is not to suggest, however, that fewer cases are settling in the wake of Covid-19. As circumstances have changed, so have perspectives. In fact, the financial and logistical pressures created by Covid-19 have, if anything, motivated plaintiffs and defendants alike to look for efficient and economical ways to avoid the time and expense associated with litigation.

Nor has the onset of Covid-19 materially curtailed the volume of litigation. Our state and federal courts long-since adopted electronic filing systems such that lawyers can file lawsuits without ever setting foot in a courthouse. With those systems in place, the number of new lawsuits filed in Jefferson County and the Northern District of Alabama have remained consistent with historical levels.

For all of the innovations that Covid-19 has spawned, though, they inevitably fall short in at least one respect. No matter how strong the wi-fi connection may be, there is just no replicating the personal connections allowed by face-to-face interactions. Those in-person communications are immeasurably better when it comes to reading a room, building and judging credibility and fostering trust.

These observations, of course, are not unique to lawyers. The difference is that lawyers trade on their ability to communicate effectively. And, while it may come as a surprise to some, the

truth is that lawyers are at their best when working collaboratively — either as a team or with their adversaries. In all cases, though, clear communications are essential.

As was the case decades ago when the introduction of email revolutionized written communications and, more recently, digital platforms and artificial intelligence revolutionized the idea of a “document,” lawyers will continue to adapt to the “new litigation normal” created by the Covid-19 pandemic. There will be costs to the Covid-19 “revolution” as well, but those costs may translate into new and better ways to persuade — which, after all, is what you want your lawyer to do.

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