



RIDING THE WINGS OF TRANSFORMATION

THE POWER OF RADICAL &
FUNDAMENTAL CHANGE

2021 INTERNATIONAL CLIENT SEMINAR
MARCH 2-4, 2021 | VIRTUAL



ALFA International
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**RIDING THE WINGS OF
TRANSFORMATION**
THE POWER OF RADICAL & FUNDAMENTAL CHANGE



2021 INTERNATIONAL CLIENT SEMINAR

**Making Lemonade:
Using Tools Forged During the Pandemic to Augment
Complex Cases (and Your Daily Practice Too!)**

Making Lemonade



I should have listened to my wife a long time ago ... “Jim, do you really need to hop on a plane to fly 17 hours to speak for two hours in Sydney? You talk about technology, don’t you? Why don’t you use some of that technology to get some of your life back?”

Kills me to say this ... but she’s right. What was I thinking?

— **Jim Bourke, managing director of advisory services, WithumSmith+Brown**

From Accounting Today, “The Top 100 People: 20 lessons learned from COVID-19”

<https://www.accountingtoday.com/list/the-top-100-people-20-lessons-learned>

Making Lemonade



Speakers

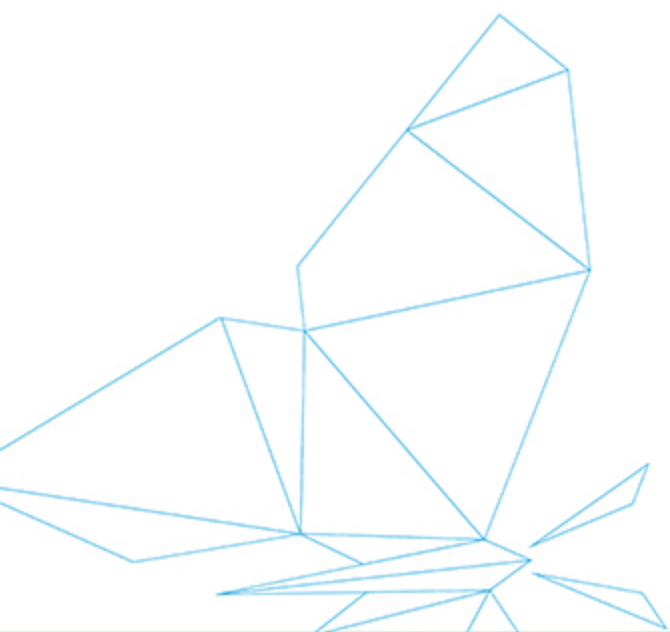
- Laura Altieri, Dep. Gen. Counsel, Del Monte Foods, Inc. (Walnut Creek, CA)
- Jaci Lee, Gen. Counsel, Flynn Restaurant Group (San Fran., CA)
- Ako Williams, V.P. & Gen. Counsel, Ushio America, Inc. (Cypress, CA)



Making Lemonade

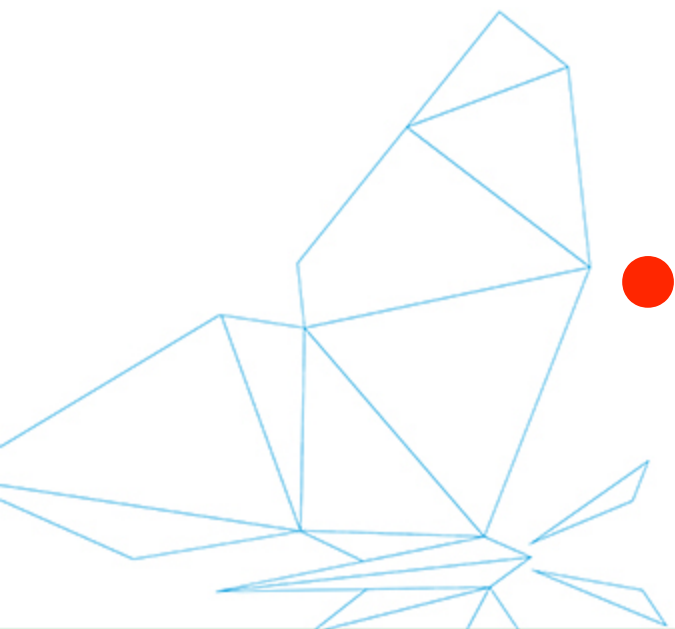
Speakers

- Doug Halijan, Burch, Porter & Johnson, LLC (Memphis, TN)
- Scott Stimpson, Sills Cummis & Gross P.C. (New York City)
- Moderator: Joseph Fortner, Halloran Sage (Connecticut)



Making Lemonade

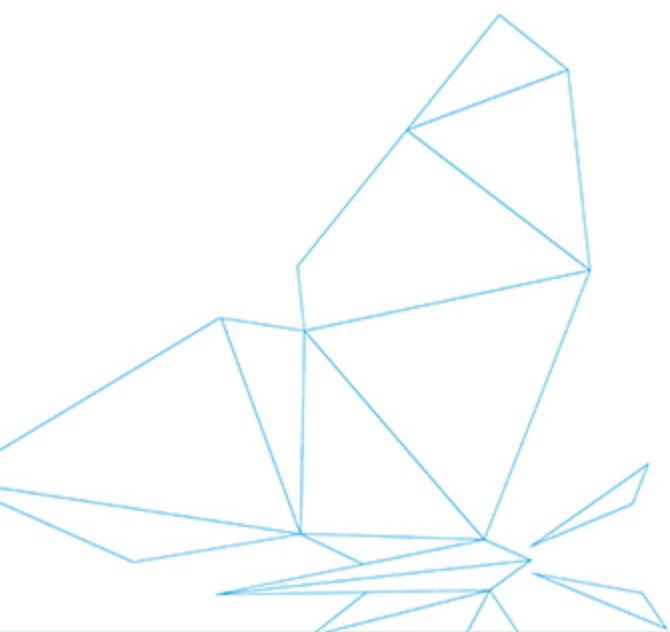
- How can you use the tech we've been forced to learn to enhance what you do?
- How can it expand your options?
- What are some tips to using that tech?
- Remember: At some point, remote *will* become optional.



Making Lemonade

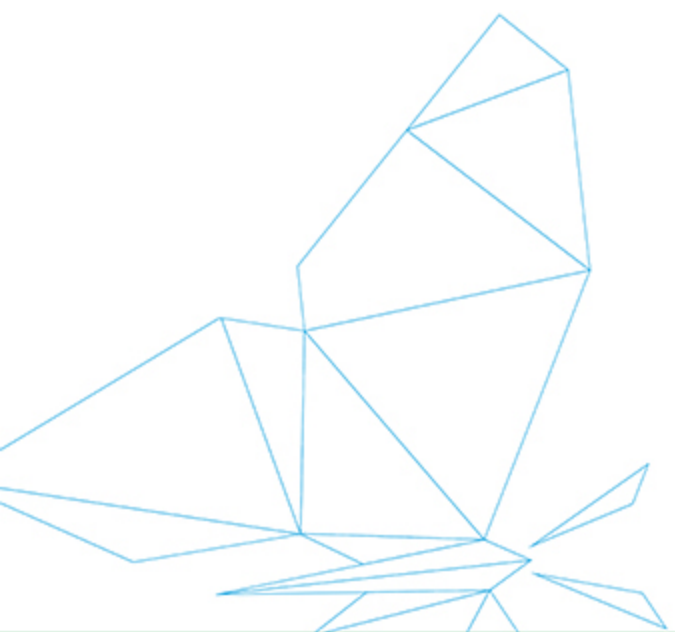


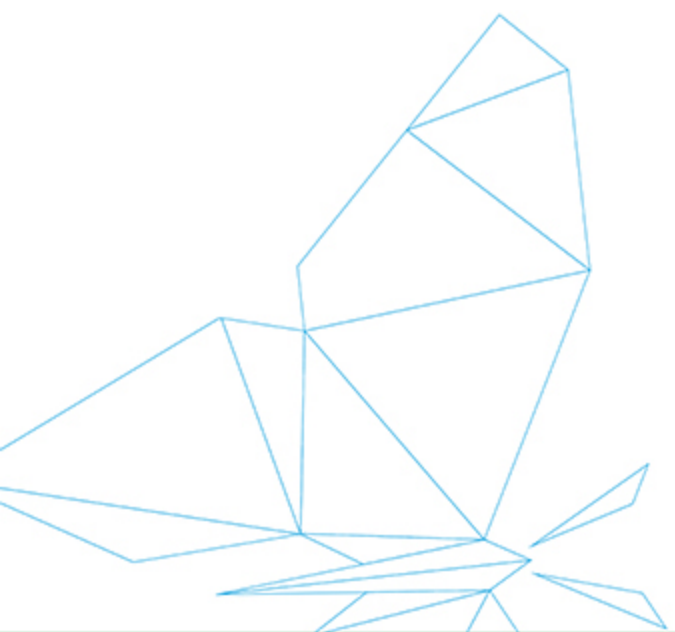
- Part I: Lemonade in Corporate Practice and Investigations
- Part II: Lemonade for Discovery and Mediation
- Part III: Lemonade in Remote Hearings and Trials



Technology in the Corporate World

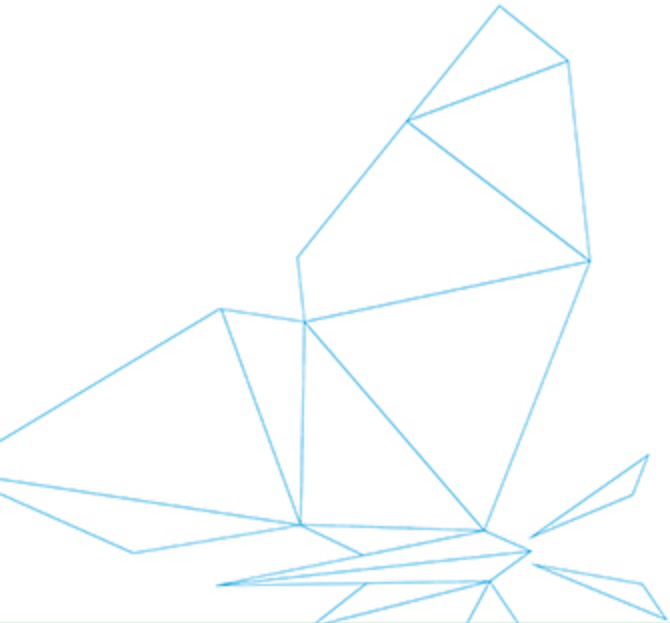
- Unexpected upsides.
- Relationship building.
- Removing geographic limits.
- Internal investigations.





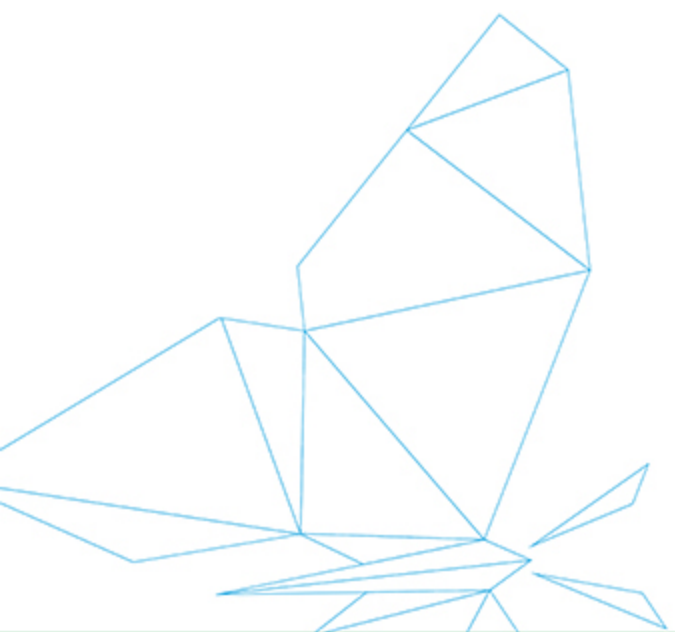
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Discovery



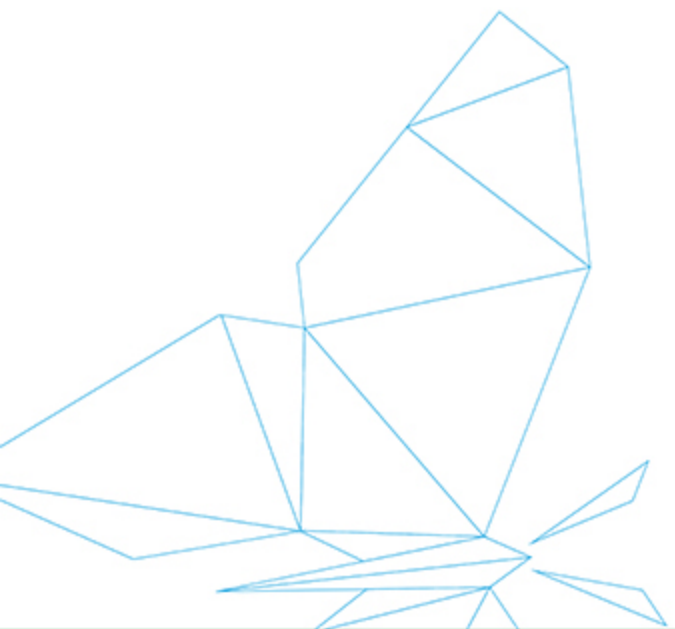
Making Lemonade

- **Gathering, preserving and presenting evidence remotely has become essential skill**
 - How can we use what we have learned over the past year to improve the discovery process?
 - What works and what doesn't?
 - When we return to “normal,” what will “normal” be?



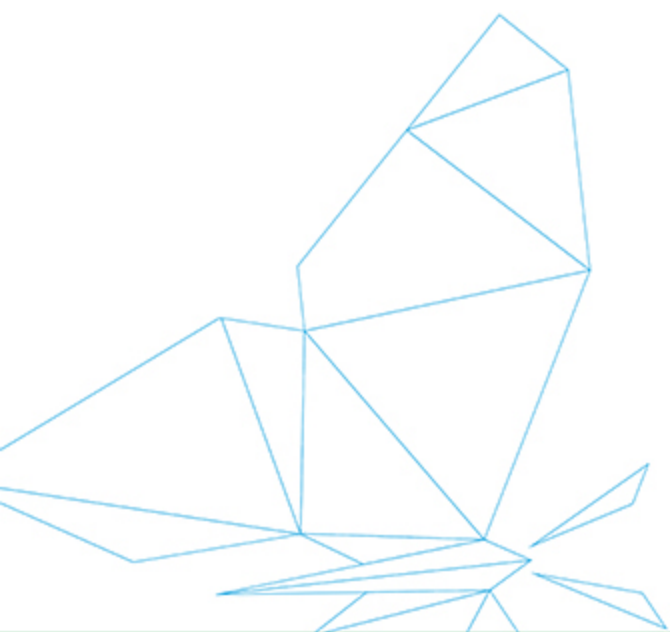
Making Lemonade

- **Biggest change to discovery process = transition to remote depositions**
- **Are we reaching a “Law 2.0” point here where remote video depositions will now be the norm, rather than the exception?**
 - What factors will drive the decision, from a client perspective and as outside counsel?

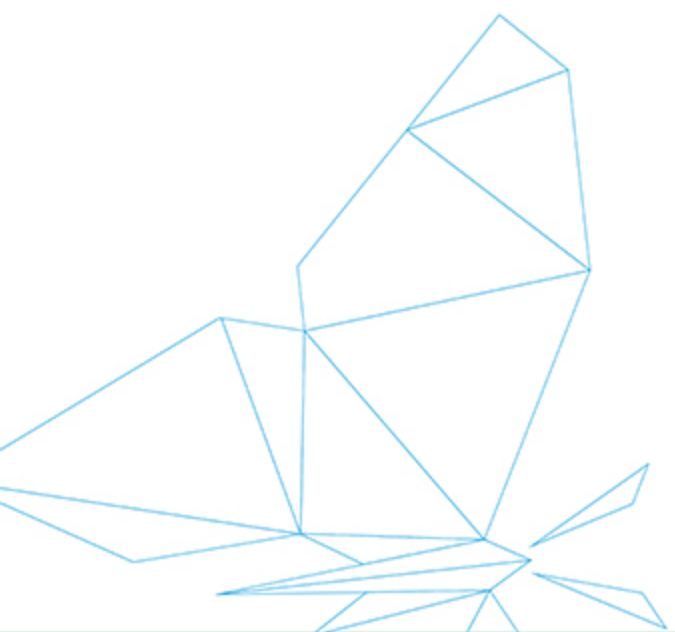


Making Lemonade

- **Essential to know governing rules (Fed. R. Civ. P. 30(b)(5) and parallel rules in state systems)**
 - Many state Rules of Civil Procedure require various types of “read ins” when a deposition is recorded, in addition to requirements RE: swearing in witnesses, before whom an official deposition can be taken, and whether that officer can be remote from the actual witness).
- **This is even more important in *cross-border* dispute**

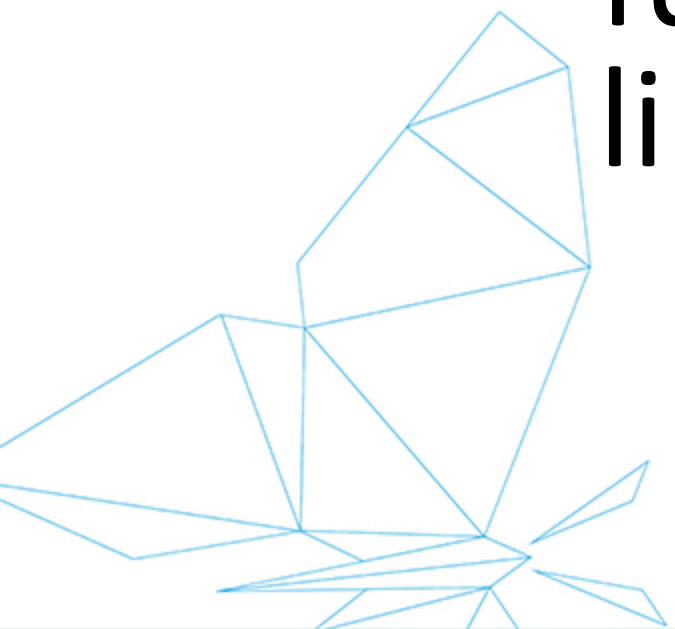


- **Best practices favor use of written protocols governing conduct & use of remote depos**
 - Stipulation
 - Court order



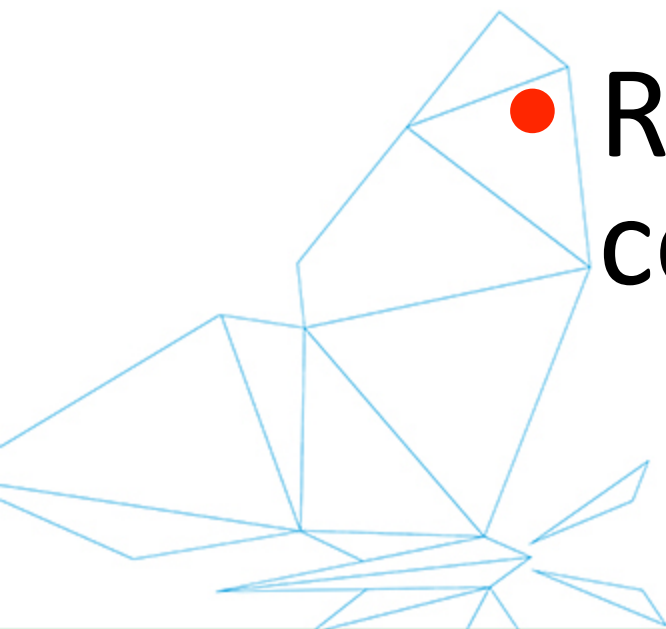
Virtual Deposition Protocols

- Written, advance agreement on specific vendor and platform + which components of platform will be used
- Acknowledgement that depositions taken pursuant to protocol are compliant with applicable RCP
- Identification of specific vendor(s) involved and deadlines for providing names of witnesses, links, log-in info, tech checks, authenticity of recording, use of Realtime transcription, use of chat function, how video will be recorded and what the screen will look like (only witness? witness and all parties?)



Virtual Deposition Protocols

- Agreement as to actual conduct of the deposition – who may be present *with* the witness and how documents will be handled?
- Exhibit handling: (1) advance shipment/agreement RE: handling; (2) contemporaneous email; (3) dedicated software and presentation of exhibits “live” (parties CAN, of course, agree to exchange documents in advance but less commonplace than it used to be, given advances in technology).
- Identification of physical location, identity of others present, visual backgrounds, agreement to turn off phones and other devices
- Rules/limits on communication during the deposition unless such communication is also recorded



Mediation/Arbitration

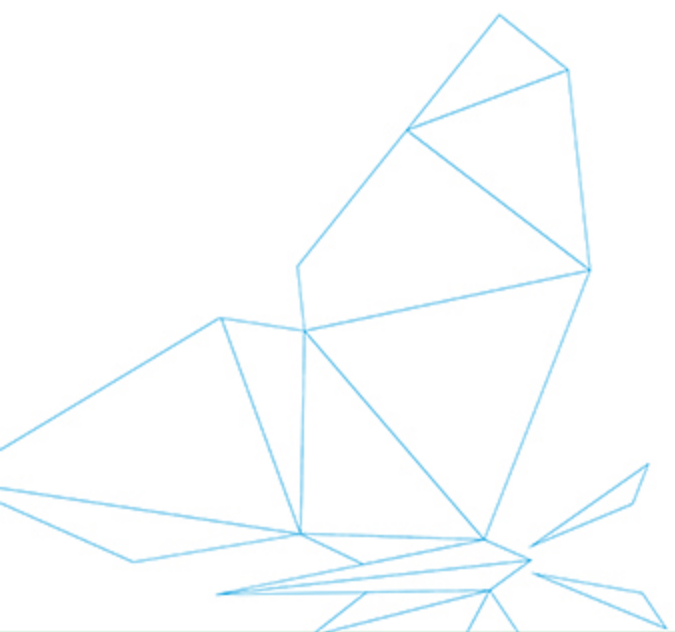
- Review your arbitration clause: does it allow for virtual hearings?
 - Procedural rules and logistics
 - [AAA-ICDR® Virtual Hearing Guide for Arbitrators and Parties](https://www.adr.org/sites/default/files/document_repository/AAA268_AAA_Virtual_Hearing_Guide_for_Arbitrators_and_Parties.pdf)
https://www.adr.org/sites/default/files/document_repository/AAA268_AAA_Virtual_Hearing_Guide_for_Arbitrators_and_Parties.pdf
 - International considerations.
- Selecting neutrals – why be limited by location?



Making Lemonade

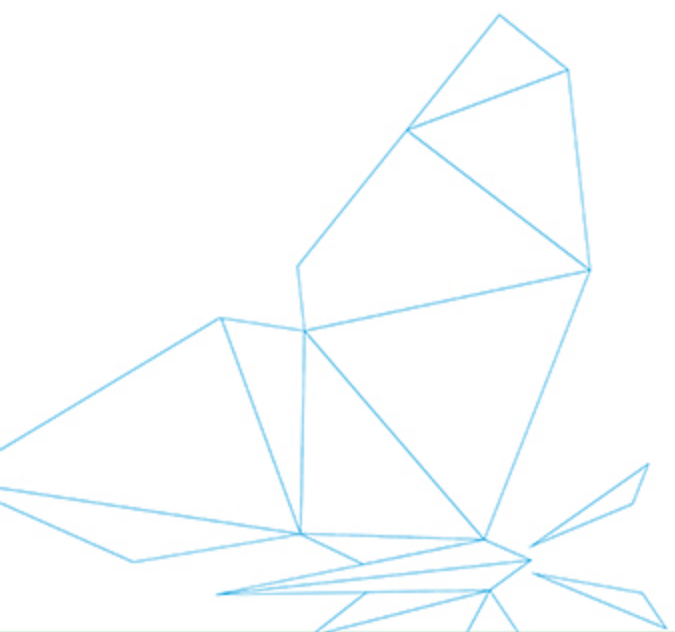
Mediation/Arbitration

- Holding the proceeding.
 - Attorney/client locations.
 - Use of exhibits.
 - Break out rooms.
 - Demonstrations.



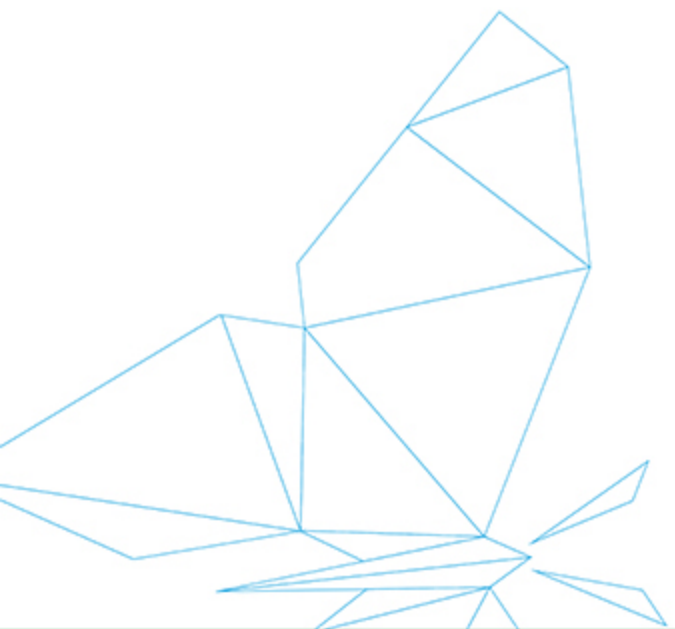
Trials

- How can you best use technology now?
- What will you do when virtual is a choice, not a mandate?



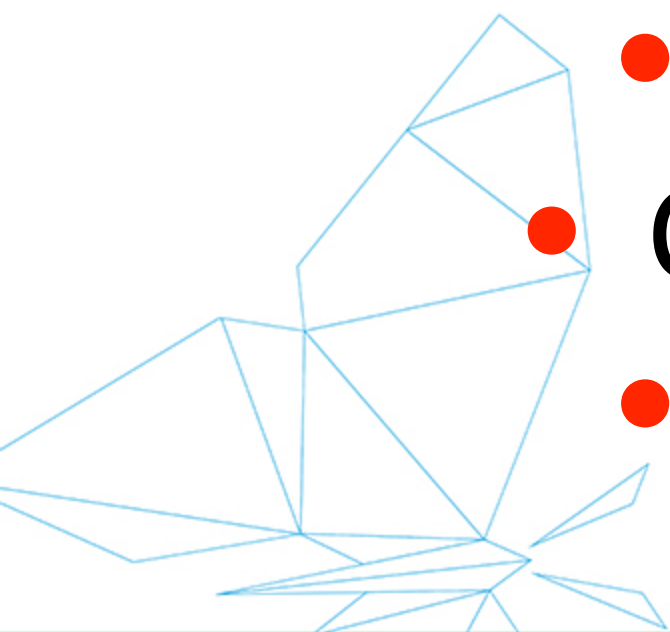
Trials

- Planning for the trial.
 - Where do you want to have the trial?
- How do you want to do the trial?
 - Live vs. virtual.
 - Can you blend?
 - How does this impact bench vs. jury trial decisions?



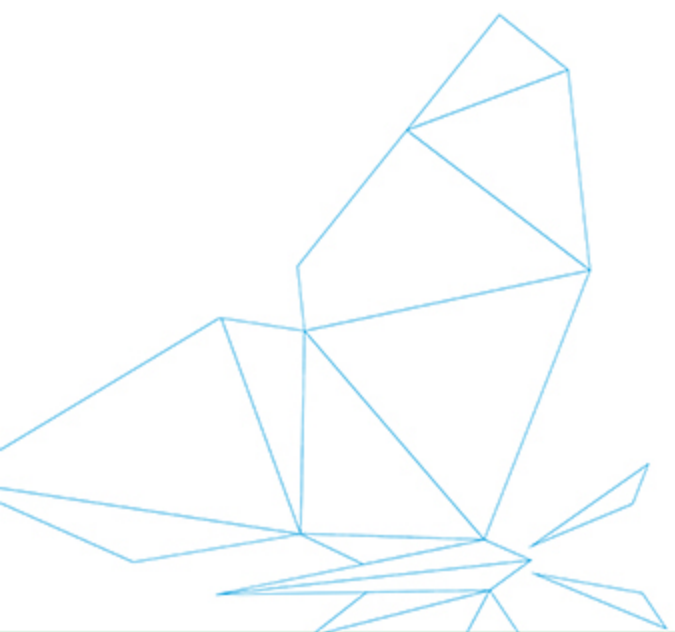
Trials

- Planning for the trial: People
 - Where will you be?
 - Where will your witnesses be?
 - Overseas and logistics considerations.
 - Need for copies of documents at remote site(s).
 - How do you make your side look good?
 - What's behind you? Backgrounds. Personal appearances.
 - Client representatives:
 - In-person or remote?



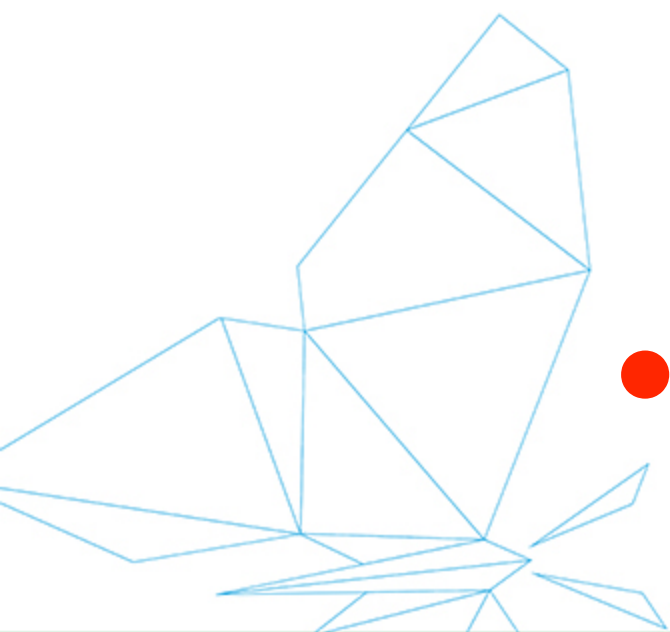
Trials

- Planning for the trial: Witnesses
 - Geography has no limits!
 - How do you want to present each one?
 - In-court considerations.
 - Virtual considerations.
 - Alone or with you?
 - Experts:
 - How does that person present "on TV?"
 - Effectively offering complex evidence on screen?



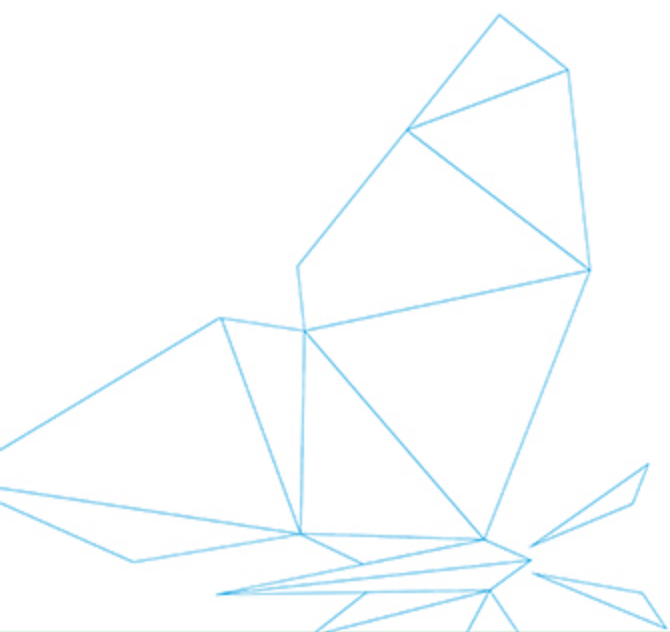
Trials

- Planning for the trial.
 - Trial length –
 - Using tech make logistics easier and reduce cost.
 - Considerations in deciding how to approach – all virtual, blend?.
 - Platform and tech decisions
 - Internet connection/reliability and speed for each location.
 - Camera choice.
 - Microphones/speakers/headsets.
 - Use of multiple screens



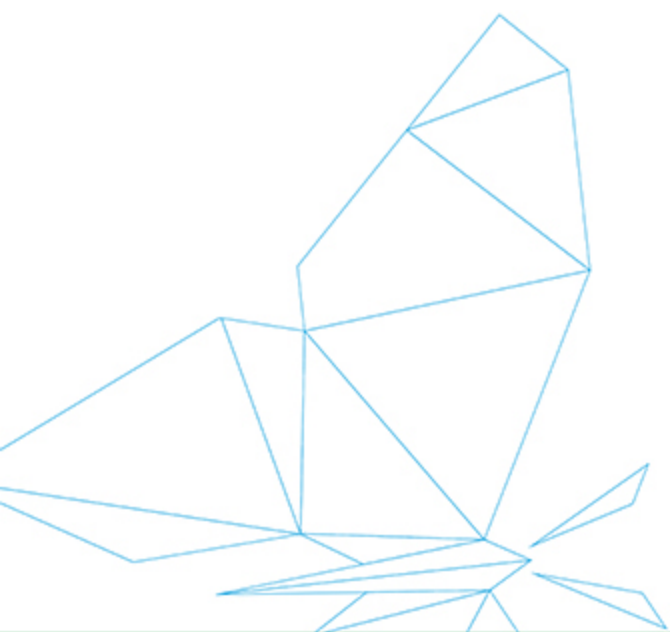
Trials

- Planning for the trial: Protocols.
 - Sources:
 - Court-created.
 - Party-created/supplementation.
 - Consider what's important for your case and trial.
 - For testimony
 - What ground rules do you want for witnesses?



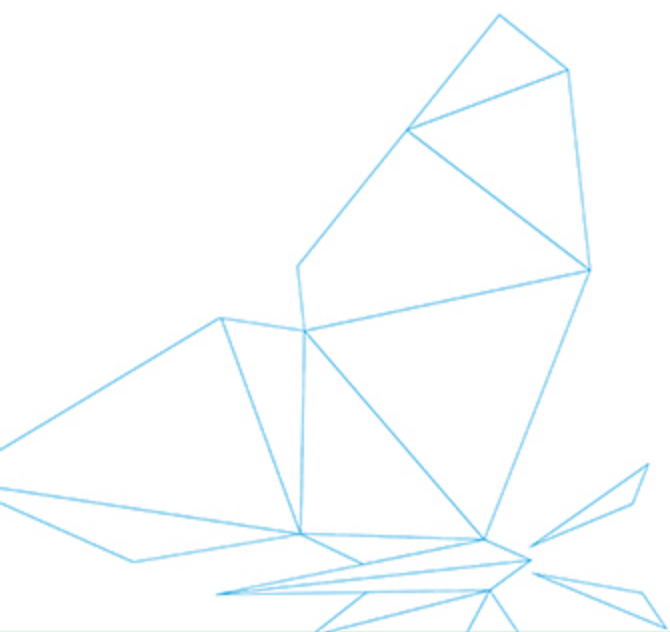
Trials

- Planning for the trial: Protocol considerations.
 - Who can be in room with witness?
 - How must witness be viewed?
 - Can it be recorded?
 - Communications with witnesses
 - Handling exhibits
 - Including pre-exchanging.



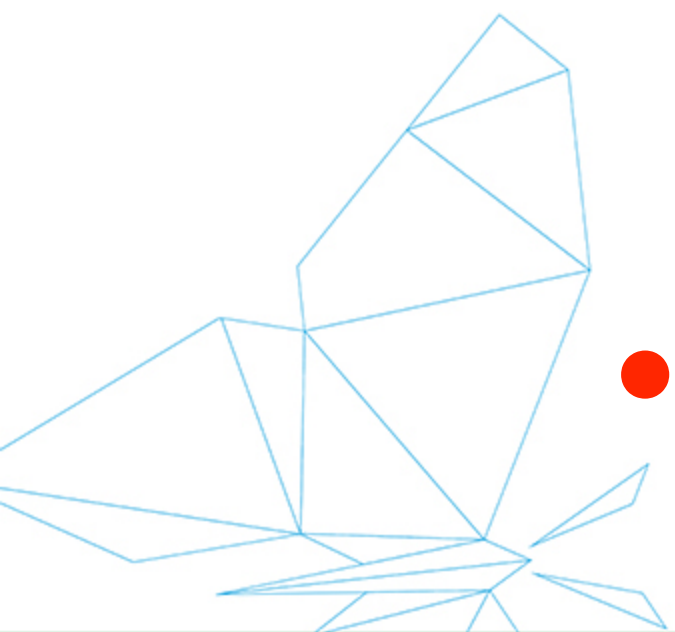
Trials

- Planning for the trial: Protocols.
- Acknowledgements: witnesses to confirm:
 - Alone, no one else in room. (Or should counsel be present?)
 - All means of external communications turned off/inaccessible and to remain as such during testimony.
 - No one communicating with them by any means during testimony while parties on record (consider what you want when on break).
 - No documents visible or accessible unless introduced and being used as exhibit.
 - Not recording trial by any means.



Trials

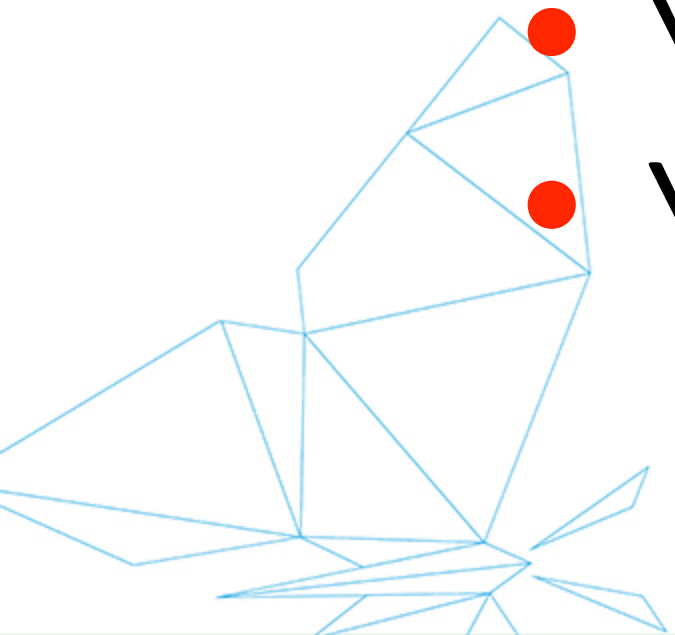
- Planning for the trial.
- Evidence considerations.
 - Consider what kind you will expect.
 - Documents
 - Videos
 - Tangible materials
 - Demonstratives
 - Think about how you want to present.
- Organize!



Making Lemonade

Trials

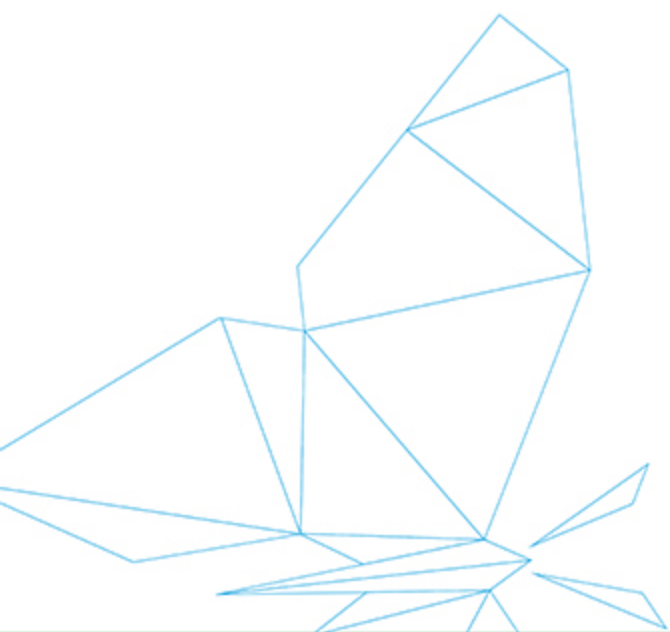
- Preparing.
 - Everything will take much longer.
 - Witnesses.
 - For technology issues.
 - For virtual participation.
 - Substantively.
 - Yourself.
 - Your team.



Trials

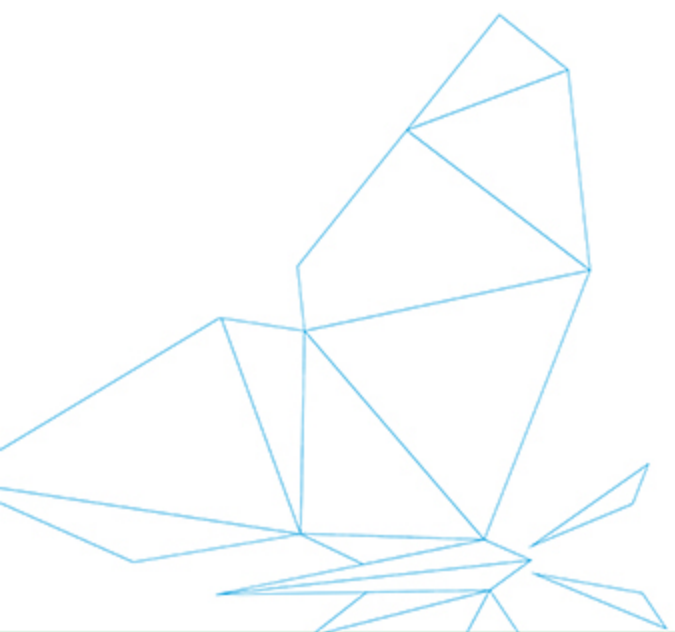
- Best practices during trial.
 - Easy rule to remember:

**YOU ARE ON TRIAL.
DON'T DO ANYTHING YOU WOULD
NOT DO IF YOU WERE THERE IN PERSON.**



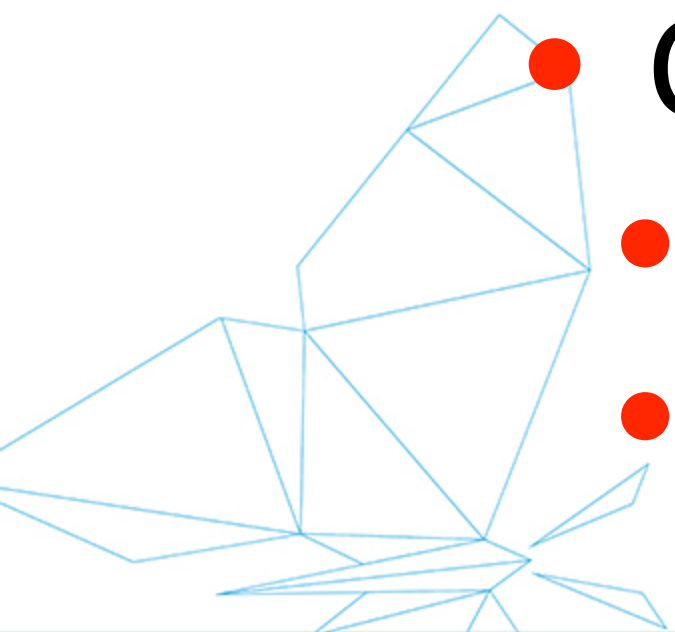
Trials

- Best Practices: Setting up Your Virtual Trial Table.
 - “Pinning”
 - “Fit to frame” vs. “Fill Frame.”
 - Use of “Participants” lists.
 - Camera/mike on/off protocol



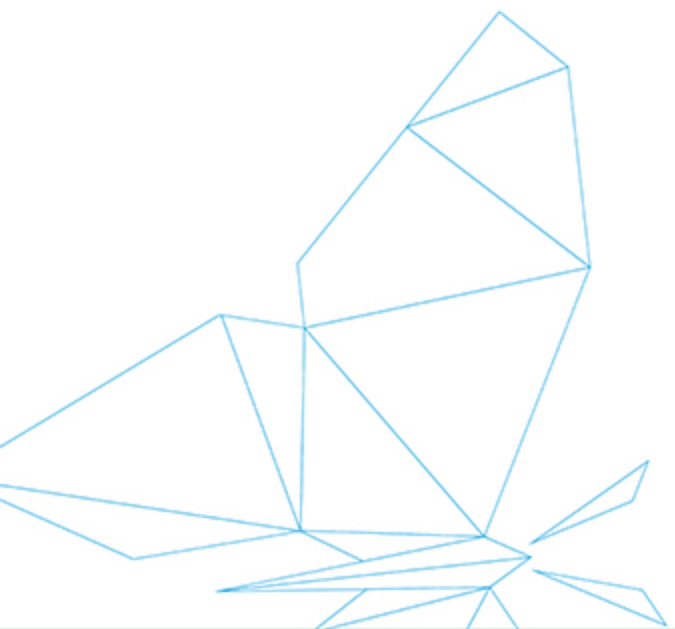
Trials

- During trial.
 - Examinations.
 - Objections.
 - Always “be ready.”
 - Discuss ahead how to get court’s attention.
 - Prepare witness not to testify over objections.
 - Counsel conduct.
 - Handling disruptive conduct.
 - Avoiding cross-talk.



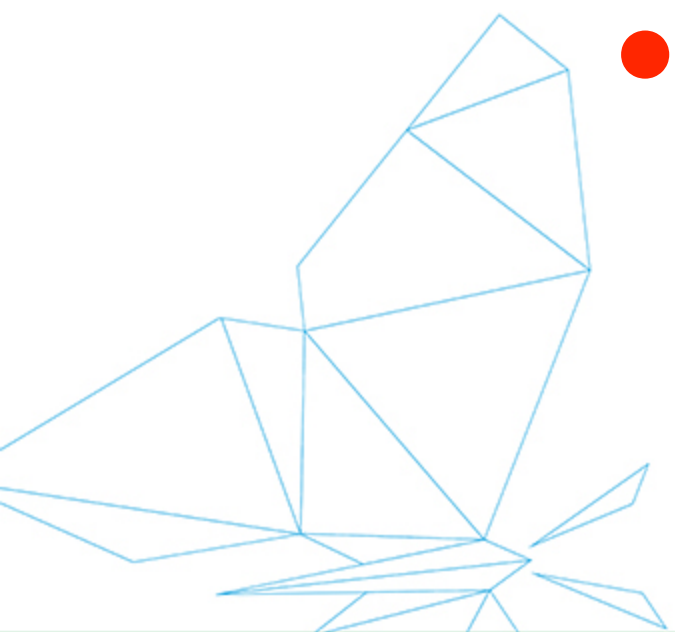
Trials

- Best practices.
 - Handling exhibits.
 - Screen sharing/window sharing.
 - Arguments.
 - Monitoring participant lists.
 - Sealing court/excluding persons.



Trials

- Be creative.
 - Keep fact finder engaged.
 - Imagery.
 - Videos.
 - Think of what they expect to see on a screen.
 - *Ironburg Inventions v. Valve.*
 - Game controller trial.



Making Lemonade



CIVIL JURY PROJECT
at NYU School of Law



search here ...

Go

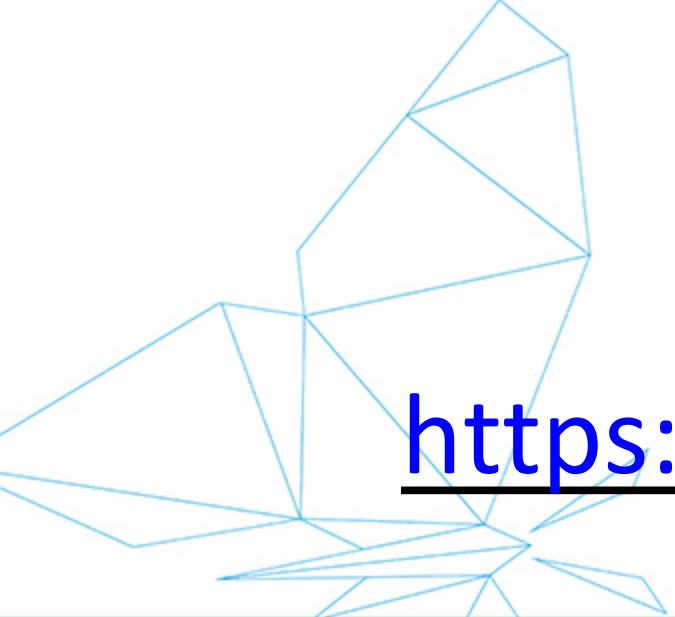
- ABOUT
- NEWSLETTERS
- CALENDAR
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Suggestions for Remote “Zoom” Jury Selection

By Stephanie Parker and Jennifer Weizenecker

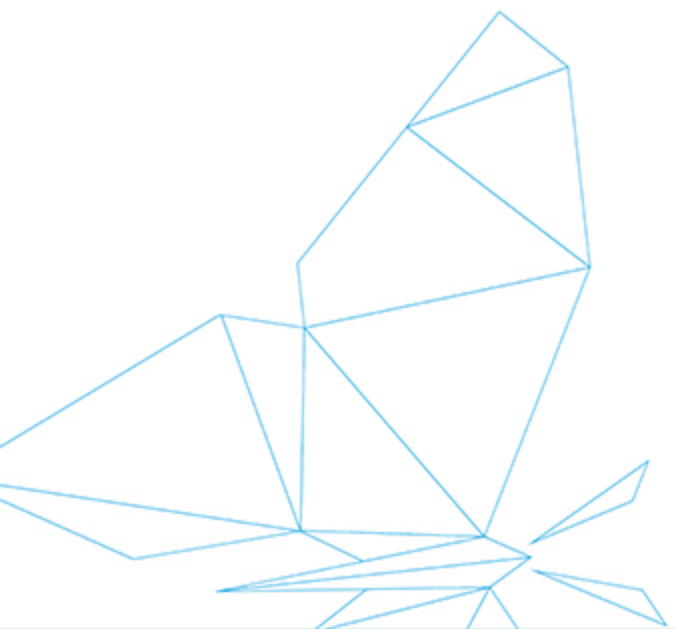
I. Jury Selection [1]

<https://civiljuryproject.law.nyu.edu/suggestions-for-remote-zoom-jury-selection/>



Trials

- The Future: when virtual is optional:
 - When may you want to present witnesses and evidence remotely?
 - Will technology allow you to expand your proof?
 - Can use of technology save your company money on trials?
 - What are the trade offs?
 - Can you use technology to break through logistic hurdles?



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