

Remote proceeding advocacy

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Master the technology so you can operate it by yourself.

The first step to become an effective advocate in remote video proceedings is to make sure you have mastered the use of the technology through which you will be advocating. You must learn to operate the technology *at the same time* that you are advocating your client's position. Being unprepared to present a document via video at a critical moment in the proceedings can have the same deflating effect of getting ready to impeach a witness in open court with a document, and then having to pause for a minute or two to find the document.

1. Do not assume you can just show up at a video proceeding and meet with success.

- a. Learning remote video technology takes both time and practice.
- b. This is not as simple as dialing a phone number and announcing your presence.
- c. You need to arm yourself with both the arguments you plan to make, and the technical skill to present them on a video screen in a credible, competent, and persuasive way.
- d. Do not make the mistake of assuming you can pick these skills up on the fly.

2. Hands-on learning—you must learn the app you are using and practice using all features in the app you will be using while you are making your argument.

- a. Instruction manuals can provide an overview, but piloting any videoconferencing app while you are making your argument requires you to practice and rehearse both skills.
- b. The Zoom app, for example,

allows you to test and place into your muscle memory most of its features without having to connect with others.

- c. Like any app, play with it and explore all its features. Try out every single technical setting. Learn how to manage multiple screens in Zoom.
- d. Set up practices with your firm's trainers or your colleagues.
- e. App practice and rehearsal opportunities may also include:
 - i. Every phone call you need to set up with a colleague or a client;
 - ii. Every chance you get to talk to your friends or family.

3. Properly set up your app's account and profile.

- a. Upload a quality photo as a backup display when your video is not on.
- b. Make sure the on-screen name displayed by the app is your full name and is spelled properly. Changes can be made in settings for most apps.

4. Home technology:

- a. Hardwire your computer to the internet if you can.
- b. Fast internet connection.
- c. Know where in your house you can find the most reliable internet connectivity and speed.
- d. Wireless—position your computer or tablet as close as you can to your wireless router (which broadcasts your Wi-Fi signal).

Tip: If your home computer or internet services are outdated, upgrade them or conduct your hearings from your law office (if open, of course).

- e. Use the best microphone you can—hardwired to the computer is probably best. *Fully charged* Bluetooth headsets work too.
- f. Quality speakers (most of

the time, computer speakers should suffice).

- g. Quality web camera—many computers have built-in cameras that will suffice, although HD external cameras can provide far better video quality.

5. Set yourself up in a credible audio-visual, distraction-free video screen.

- a. Know that the camera provides poor quality video if you are entering a Zoom conference through your VDI.
- b. Camera at or slightly above eye level (not looking down or up at you and strong angles). You do not want the camera below you looking at your chin or up your nose. Nor do you want it above you, looking down at the top of your head or making you look up, craning your neck at odd angles.
- c. Frame your image (if viable) from mid-chest up.
- d. Make sure you are well lit (natural light if possible). The best lighting should be unnoticeable. If you are too dark or too bright, it means your lighting likely will become a distracting focal point for your audience that detracts from the quality of your argument.
- e. If the light is behind you, your face likely will be too dark. If you are front lit by a spotlight or ring light, learn how to look at the camera without squinting.

Tips:

- A quick internet search will let you find lighting solutions designed specifically for computer videoconferences.
 - A portable desk lamp that can be positioned in front of you will also work.
- i. Do not position yourself with a bright window or light behind you (close the blinds or reposition your setup).

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- ii. Set your camera angle so you do not pick up bright overhead lights on the screen.
- f. Try to set your lights at an angle that does not cause the lighting to reflect off eyeglasses back into the camera.
- g. Conduct a sound-test: use quality, echo-free audio (with volume control)—and know how to increase or decrease the sound you make when you talk. Consider separately connecting your audio through your phone, but if you do so, make sure to mute your computer to minimize feedback and echo. Echoes can be caused when your computer audio and microphone are open and you are participating in the meeting by phone at the same time.
 - i. Figure out how to quickly mute and unmute your audio. If the audio is coming through your computer, in the Zoom app, for example, Alt-A on your keyboard toggles between mute and unmute, and holding your computer's spacebar down temporarily unmutes you while you hold the spacebar down and puts you back on mute when you release the spacebar.
 - ii. Whenever you are unmuted, recognize that
 - (1) Every noise you make can be heard, including coughs, heavy breathing, and other noises.
 - (2) Typing on a keyboard can be heard.
 - (3) Shuffling papers can be heard.
 - (4) Noises you make while chewing food or drinking can be heard on an open mic.
- h. Silence your computer notifications (those noisy bells and whistles that make noise every time you get a notification of

some kind)—if you don't know how, get help.

- i. Test, learn, practice, and rehearse setting it up.
 - j. After you think you are all set, take another *look at your self-view* with a *self-critical* eye and simplify what you see that your audience will see, minimizing background distractions. In other words, “eyeball” what is behind you on the screen and remove that which is too distracting. Eliminate views of overhead lights or lights behind you.
- 6. Beware virtual backgrounds.**
- a. Zoom (and some other videoconferencing programs) permit the use of your own virtual backgrounds.
 - b. Sometimes virtual backgrounds fail and people can see through them to what is behind you, without you knowing it—so make sure that what is behind you is appropriate.
 - c. If you need to use a virtual background (e.g., to conceal your physical location's distractions):
 - i. Do not use one that itself creates a distraction; make sure it looks okay even when making hand movements.
 - ii. Any photo can be turned into a virtual background.
 - iii. Test out how the background looks and use your common sense to gauge how a judge, witness, or client may react to it.
 - iv. Consider buying a “green screen” and using the green screen feature on your app to stabilize any virtual background you use.
 - v. Watch the news and some of the slightly out-of-focus, calming backgrounds and try to replicate one of those.
- 7. Use a co-host or virtual hot seat assistant where appropriate.**
- a. Consider a co-host for meetings you will be leading

that will be attended by many participants. The co-host should know how to operate your video platform to assist with your presentation. Make sure you practice/rehearse with your co-host. The co-host can moderate, convey questions from the audience, and help with screen sharing, advancing PowerPoint slides, and other technical issues. Enlist our trainers for further information on this.

b. Virtual hot seat. Just like when you have someone in the courtroom running the technology (putting up exhibits on screen, playing depositions, and the like), you can use a virtual “hot seat” assistant to do so in videoconferences, hearings, evidentiary hearings, depositions, and trials. It works better if the virtual hot seat operator is in the same room (applying social distancing standards) as the lawyer issuing instructions.

8. Master the “Share Screen” feature.

- a. This feature allows you to present documents, exhibits, and demonstratives during your presentation. When you use this feature, however, your image may be minimized. Given this, make sure any item you want to share enhances, rather than detracts from the strength of your argument or presentation.
- b. “Pre-set” any documents, exhibits, or applications you want to share.
- c. Make sure you share the right screen on your computer. Practice figuring out which screen option is the correct one.
- d. If you are going to play a PowerPoint slide show by sharing your screen, make sure you have rehearsed it ahead of time so that you know exactly on which of your screens the slide show will be displayed when you share it. That may be different from the screen you use to advance the slide show. This can be tricky with

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multiple screens.

- e. Avoid scrolling through PDF exhibits. You should know what page you want to display and have the document set for that PDF page or be prepared to jump to that page with the “Go To” function.
- f. For depositions, learn how to give the witness control of PDFs displayed on screen so that they can review what they want to review.

9. Embed “tech” cues into your argument notes or outlines.

- a. Take a lesson from the theater business on this.
 - i. Stage managers for theater productions use “tech sheets” to call out cues that instruct people running lights, sound, curtains, and set and prop movement on stage so that to the audience, those features of a production are seamlessly integrated with the actors’ performance.
 - ii. The cues are written down and rehearsed as part of the performers’ rehearsal.
 - iii. Even the most well-rehearsed stage manager (who may think they have memorized the cues) will follow the written tech sheet so that they do not inadvertently miss a cue.
- b. So when you are going to use technology like sharing a screen to show documents, or advancing a slide show, embed visible cues to take those actions right in your notes.
- c. For example, you may have notes to tell you to say something like this:
Argument point []
That cue would tell you to advance the slide show at that point in your argument. However, remember that this takes rehearsal.

10. Have a low-tech backup plan

for when your technology fails.

- a. Murphy’s Law applies to technology, just as it does to most everything else. When it fails, in the heat of battle, you may find yourself handicapped if you do not have a lower tech backup plan.
- b. Consider hard copies of exhibits to the Court or a witness ahead of time to be used in case the technology fails.
- c. Many judges have special filing portals to upload such material in advance of hearings so that the Court can open up and review matters ahead of time or during the hearing.
- d. Consider using a cloud app that all on the call can be given a link to in order to access exhibits independent of your effort to share them over a videoconferencing app.

Advocacy skills on TV

11. Credibility anchors your advocacy.

- a. Adapt your advocacy skills for display on a television/computer screen.
- b. Take lessons from screen actors and newscasters. Watch them critically to see what techniques they use to look believable on camera.
- c. Apply the principle of the three “Cs” on camera—Confidence, Control, and Credibility.
- d. PREPARATION and PRACTICE of the simultaneous handling of the technology while advocating is key to successful creation of on-screen credibility in remote proceedings.

12. Remember you are “closer” to the judge or the witness than usual.

- a. Connect with the judge—look her in the eyes by arguing directly at your camera.
- b. Avoid fast, large, and other distracting movements.
- c. Do not just read your argument—among other things, you are close enough on screen for your eye movements while

reading to be seen.

- d. If you consult items on your computer screen and wear eyeglasses while arguing, beware that the information you review on your screen may be visible in a reflection in your eyeglasses.
- e. *Tips for looking the judge(s) in the eyes:*
 - i. Your argument needs to be directed at the camera—if you focus on the camera, the viewer will see you looking straight at them.
 - ii. If you position the view of the judge immediately below the camera you are arguing to, you can probably get away with looking directly at the judge’s image (just below the camera) and have it appear as though you are looking at the camera.
 - iii. Consider using the *Pin video* feature to make the judge the dominant image center screen, even when you are talking. (Pin video feature can usually be found under the ellipses in the upper right hand corner of the person’s screen.)
 - iv. *Do not position the target of your point—a judge, a client, or a witness—on a second monitor different from the monitor with the camera. If you do, when you look at the viewer’s image for emphasis, it will seem to the viewer that you are actually looking away from them.*

13. Lean in.

- a. Lean *slightly* closer to the camera to physically add emphasis to a point you are making or a question you are asking.
- b. Do not overuse that technique, and do not bend so far forward that it looks like you are bending over a table to lean in.

14. Do not let your desire to display your newfound technical skills interfere with your advocacy.

- a. Just as you would in open

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court or in an in-person deposition, listen for opportunities to pivot or make points in response to what you observe and hear, even if it means jettisoning demonstratives you had rehearsed sharing with the technology.

- b. If opposing counsel makes a point to which you want to respond, or if the judge has posed a question (either to you or your adversary) that provides an opportunity to make a point that doesn't particularly fit in anywhere in what you rehearsed or doesn't fit into your screen sharing plan:
 - i. *Stop the screen share.*
 - ii. Pause.
 - iii. Look the court square in the camera's eye, and make your point in the most impactful manner as is appropriate under the circumstances.

15. Use silence and pauses to punctuate your argument.

- a. You have limited time in most hearings involving arguments to a judge.
- b. When you make a big point, use a pause or silence, while looking square at the camera, to underscore the point before moving on.

16. Remember you are in court—act and dress like it.

- a. Wear courtroom attire.
- b. Do not wear clothes that disappear into your background.
- c. Just like in court, silence your cell phone. In addition:
 - i. Activate do not disturb on office phones (if you are in an office or have a phone nearby).
 - ii. Silence your computer notifications.
 - iii. Close your door to keep pets, children, and other noisemakers out.

- iv. Do not conduct your argument or proceeding from a space where Alexa, Siri, or Google devices may hear and respond to your voice.

17. Hearing etiquette

- a. Controlled privacy—treat the room you are in as if it were part of the live courtroom and control access to the room.
- b. Silence your cell phone—unless of course that is how you are connected to the audio; silence your computer notifications; put office phone on DND.
- c. When you are not talking, minimize your movement and facial expressions.
 - i. Remember you are right in front of the screen (not way back at counsel table)—the judge can see your every expression and movement.
 - ii. Stay alert and neutrally game faced.
 - iii. Don't disappear from the camera view.
 - iv. Stay on mute whenever prudent—to eliminate unintended and sometimes noisy interruptions.
- d. Speak directly into your microphone—
 - i. Don't shout at a speaker phone.
 - ii. Consider using an external microphone connected to your computer.
 - iii. Do not be too far away from the microphone.
- e. Watch the volume level rise and fall on the image of a microphone in the lower left hand corner to make sure you're not too loud or too soft—learn where the physical volume controls are on your computer and also where inside the application you can find audio volume controls.
- f. Wait at least an extra beat in between your points to make sure you do not interrupt a judge if he is asking a question.
- g. If the judge's question was "talking over" you, you may

have missed the first part of it. Do not hesitate to repeat the question you believe the judge asked and wait a bit for the judge to give any clarification.

- h. Be sure to be very specific in identifying any exhibits or demonstrative aids you are referring to.
 - i. Remember to enunciate even more clearly over the phone than you might do in court.
 - j. Minimize your movement and facial expressions when not talking—remember you are right in front of the screen (not way back at counsel table) and the judge can see your every grimace.
 - k. Be sure you can reach your opposing counsel in case you have a connection problem.
 - l. If you wear glasses, be aware that they may reflect what is on your computer screen.
 - m. Do not swivel your chair around.
 - n. Remember you are always "on" and everything you do on screen can be seen, including taking notes, drinking a soda, scratching your head, rubbing your eyes, etc.
 - o. If someone is observing the argument or hearing off screen, do not let your listener inadvertently move on screen or talk to you during the hearing.

18. Educate and train participating clients and witnesses.

- a. Your clients and witnesses likely have not had the same practice and training you have had on how to conduct themselves during remote proceedings.
- b. Help them get comfortable with what will transpire.
- c. They are subject to all of the same rules that the other participants are, so train them in those rules.

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