

BENCH NOTES: FIVE TIPS FOR ADVOCACY IN THE WORLD OF VIDEO HEARINGS

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Published in N.H. Bar News pgs. 5, 8 (Sept. 16, 2020)

When the COVID-19 pandemic prompted the New Hampshire Supreme Court to suspend all in-person trials and hearings in March, the judiciary quickly increased its use of video conferencing to meet our constitutional responsibility to adjudicate cases and controversies. This shift from live hearings to advocacy via a computer screen was dramatic for many practitioners. In those early days of the pandemic, gaffs and awkward presentations were understandable and forgiven. After months of practice, all of us should have now fine-tuned our video presentation.

With in-person court proceedings still limited, video advocacy is likely to here the foreseeable future. With that in mind, below are five suggestions for successful advocacy by video.

1. **Formality is important:** Many law offices have closed during the pandemic, forcing lawyers to “appear in court” from home. Still, it is essential that attorneys create a space and environment at home that replicates the formality of court. Whether an attorney is making a case from a home office or a kitchen table, he or she needs to stage the setting appropriately. If I am distracted by the pictures on the wall, the disarray of your open closet, or your cute cat bounding in and out of the video, I am not paying close attention to your legal arguments.

Recently, the superior law clerk committee interviewed almost 20 law school students virtually. Most staged their interview settings against a neutral background, using either a blank wall or curtain as a backdrop. This helped us focus on the candidate and the interview, and not the distractions of the setting. Throughout the interviews, I thought, “If law students can set up their video interviews like this, then lawyers can take the same care when they participate in hearings.” It is easy for all of us to allow the informality of our home surroundings to prevent us from treating the proceeding with formality. As a result, we need to take special care to be intentional in the way we set up our home workspace.

2. **Pay attention to your camera:** There are some basic rules of etiquette in court that are so ingrained that they go unmentioned when we talk about effective oral advocacy in the courtroom. How a lawyer appears and behaves in court effects the court’s perception of that person. Good eye contact is a hallmark of a confident lawyer. No litigator would think of facing away from the judge and talking to the wall when making an argument in court. Yet, when it comes to the video presentation many lawyers do not adequately consider their own presentation on the screen.

One lawyer who regularly appears before me in video hearings has positioned his camera to show only the top of his head. Others, who are working with two monitors, forget to direct their attention to the one with the camera, meaning I am looking at the side of the lawyer’s face. All of this matters because, just like in the courtroom, the style of your video presentation influences the effectiveness of your advocacy.

All video conferencing programs allow us to see ourselves – and assess how we appear to other participants in a hearing - before we go live. Take the time to do this.

3. **Lighting matters:** Avoid sitting in front of bright windows and under harsh lights. From their first year in law school, attorneys learn that their credibility is essential for long-term success. Often the backlight causes the individual’s features to be shrouded in darkness. Your credibility becomes hard to judge when your face is obscured by shadows. Video already blunts the personal connection with the judge. Don’t further compromise the judge’s ability to read your facial expressions with bad lighting.

Bad lighting may also interfere with the effectiveness of your presentation. It can be distracting when a lawyer is positioned with a bright light or window directly behind the individual. The glare naturally attracts the judge's attention away from the lawyer and toward the light.

4. **Sound matters:** No judge would tolerate audible text alerts in court. No lawyer in the courtroom would think it acceptable to loudly crinkle paper while opposing counsel is making her argument. Yet video presentations commonly include distracting noise: the bing of email or text notifications, a ringing phone, the click of computer keys, a barking dog, the hum of an air conditioner, and the shuffling of paper all occur regularly during hearings. Every video conferencing program has a mute feature. If your space is limited, you need to sort pleadings or other documents near your computer microphone, or there is risk of background noise use the mute function.
5. **Don't multi-task:** Just because video conferencing allows you to multi-task, it does not mean you should. If you are answering an email during a hearing, you are not paying attention to what your opponent is saying. The best practice for video hearings is—just as in the courtroom—to sit quietly and listen respectfully to your opponent's argument. This minimizes the chance of creating distracting, extraneous noise and keeps you focused on what is happening in your case.

Many lawyers and most judges are eager to return to the regular court operations with live hearings. It is likely, however, that video hearings will continue to have a place in court even after the current crisis passes. Developing some basic etiquette will make you a better lawyer and more effective advocate in our increasingly online world.