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Bench Notes: Five More Tips For Bringing Your Video Advocacy To The Next Level



By N. William Delker

In the September 2020 edition of Bench Notes, I shared five tips for video advocacy. With the dawn of 2021 upon us and inoculation for COVID-19 underway, the promise of a return to in-person hearings and trials is within grasp. But don't table those WebEx skills just yet. I expect we have at least a few more months of virtual court proceedings ahead of us and some virtual hearings are likely to stay beyond the crisis.

Having now presided over months of video hearings, I still believe that you cannot replace an effective face-to-face cross-examination of a hostile witness over the computer screen. A lawyer's ability to use body language, facial expressions, and tempo to control a witness are muted if not impossible to pull off effectively over the internet. That said, video hearings are not without benefits: they are cost-effective and convenient for clients and efficient for the courts. A hearing for an emergency temporary restraining order, preliminary injunction, or a bail hearing for an incarcerated defendant can be scheduled on short notice with a video link to WebEx. Because the outcome of those early proceedings often shape the future trajectory of the case, the effectiveness of your lawyering skills is essential for your client. With this in mind, consider these pointers to take your presentation to the next level.

Save your bandwidth

Nearly everyone who has participated in video conferences, meetings, or hearings has experienced frustrating jerky lags in video, dropped audio, or the dreaded “death spiral” that means your bandwidth is not adequate. There are several easy ways to improve your connection and, thereby, performance.

- First, close all non-essential programs on your computer. Many programs are continuously connected to the internet. Having multiple open tabs in your browser may be sapping your speed. Likewise, if you are connected to the office server from home by a virtual private network (VPN), close the VPN connection during the video hearing to save bandwidth.
- Use your phone, rather than your computer, for audio. When you join an online meeting only via your computer, the combined use of audio and video eats up your bandwidth. You’ll improve your connectivity if you use the meeting’s call-in number for audio and save your computer bandwidth for the video. When you call in, make sure to include the Attendee ID you are provided with the hearing notice as it assures that your video and audio will be synchronized.
- If you are working from home and your kids are gaming online, they may need to take a break while you are in your hearings. Your internet connection will slow as more people tap into it. Just as too many simultaneous showers sap your hot water pressure, too much traffic on your internet will overwhelm the service.
- If you are using Wi-Fi to connect to the internet, consider hardwiring your computer directly to the router. This will improve speed. If you have only a Wi-Fi connection available, move your workstation as close to the router as possible.

Don’t be afraid to share

The adage “a picture is worth 1000 words” couldn’t be more true during the video hearings. The “share” function in WebEx allows lawyers to display a photograph; map or diagram of the scene; surveillance or body camera video; or the audio recording of a crucial 911 call. This is often the most compelling evidence in a case. Surprisingly, sharing this content is also the most under-utilized technique during virtual hearings.

Sharing exhibits virtually is easy once you know how, but it does take practice and a little advanced planning. For example, lawyers need to be careful to stop incoming email and text notifications so the court and opposing counsel do not see your confidential communications from clients or a reminder from home to pick up cat food. Also make sure all your exhibits are easily accessible in one folder so you are not searching for the files while the judge and opposing counsel wait. To share videos on WebEx, you may need select the “optimize for video and motion” or “play multi-media” setting for the videos to play properly. There are lots of short, helpful tutorials online for more guidance on sharing content.

To take your video hearing to yet a whole other level, consider incorporating Trialpad, Trial Director, or a similar litigation software program into your presentation. All allow you or your witness to markup exhibits during testimony. These programs require an additional, relatively inexpensive, app such as Reflector 3 to sync the litigation software from a tablet

to WebEx, Zoom, or other video conferencing platforms. It is worth the small investment for an impressive presentation.

Know who is in the room

During in-person courtroom hearings, we all know who is present. It is pretty easy to sense when the spectator in the back of the courtroom is sending subtle cues to the witness on the stand. That kind of nefarious influence is much harder to police in virtual hearings and depositions.

A good advocate needs to be prepared to head off that kind of witness coaching. The lawyer should ask the witness who is in the room and if the witness has access to chat, text, email, or other communication software. To be extra careful, instruct the witness to scan the room with the video camera so you can see who else is present. Also keep an eye on the testifying witness for other clues of improper influence. Does it appear that the witness is reading something or looking at another person off camera? Any good lawyer knows you need to read the witness's body language and follow up on those tells with appropriate questions. These instincts are just as important in the video platform.

Use of Interpreters

Foreign language translators or sign language interpreters provide a vital service to ensure access to justice for everyone. During in-person court proceedings, most interpreters practice simultaneous translation by sitting next to the witness and whispering in the person's ear. This allows for a relatively seamless presentation. Even during live hearings, lawyers need to make adjustments to accommodate the interpreter. It is essential to slow down to allow the interpreter to keep up. During video hearings, this is even more critical because interpreters must use sequential translation. This means once the lawyer stops speaking in English, the interpreter translates the lawyer's words into the foreign language. After the witness responds in a foreign language and has stopped speaking, the interpreter translates the answer into English. The interpreter can only remember so much of what you have said, so ditch the legalese and speak in short, declarative sentences.

Small tips that make a big difference

As I noted in the prior Bench Notes, muting yourself when you are not speaking is essential to eliminate distracting background noise. But you can do this without fumbling with the mouse. To unmute yourself quickly, hold down the spacebar, when you release it you will be back on mute.

For lawyers, clients, or witnesses who appear on the WebEx hearing via a smartphone, the WebEx app offers an easy connection to court hearings. You can quickly join a hearing using the app by scanning the Meeting ID with your phone's camera. This feature will automatically direct you to the hearing without having to type in the meeting ID or participant code that came with the hearing notice.

Remember, practice is essential for a smooth presentation. You can utilize WebEx for free to hone your skills before the hearing by visiting <https://webex.com/test-meeting.html>. The New Hampshire Judicial Branch also offers instructions, best practice guides, and

troubleshooting advice for video hearing on its website. Just visit
<https://www.courts.state.nh.us/webex/index.htm>.



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