

Video Remote Argument: Best Practices Part II

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We continue with the second part of this column from the February issue

(Second of Two Parts)



Last year, as noted in our December column, I served on a task force that drafted a set of proposed “best practices” for remote video argument, with several appellate colleagues across the country, all Fellows of the American Academy of Appellate Lawyers.

When I reported on our work a few months ago, I had hoped events would conspire to not have to follow up with a second column on video remote argument. Alas, no — it looks like we will be presenting remotely for at least a few more months. So, this column is devoted to some more of our task force’s “nuts and bolts” recommendations, slightly edited for this publication.

We pick up with issues of “Personal Presence.”

B.4. The Camera

The camera and its demands cause the most profound changes from personal argument to video argument. The camera is merciless; it picks up everything in its range, unlike the judicial eye, which is often blind to minor distractions in the courtroom.

Laptop cameras provide adequate performance, if positioned properly. But if your resources permit it, one upgrade to consider is a stand-alone webcam or even a quality digital camera. A separate camera should come with a high-quality lens and better resolution that make you look more natural and present, and thus more professional and authoritative.

Do not use a wide-angle, fisheye type camera designed to capture a whole conference room. If you're using a conference-room camera, set it up to zoom to your head and shoulders and don't use its wide-angle setting.

But more important than camera quality is camera placement — this is so for several reasons. Of course, the camera must be set up so you are facing it. Vertically, it should be positioned so that the top of your head appears near the top of the frame. And take care to determine the distance between you and the camera that provides the court's best view of you, so you do not look too close to or too far away from the judges.

The camera's lens should be parallel with your eyes and, ideally, perpendicular to the ground. This presents the most natural view and sees you straight on. If the camera is not perpendicular to the ground, the parallax distortion in the background will look unprofessional and distracting.

A camera shooting from a lower angle will see up your nose and into your mouth, and may put your face in shadow. This is a particular problem with using a laptop webcam if it is resting on a desk and you are looking down at it, as is the normal laptop operating position. If you use a laptop camera, try to set the laptop on some kind of stand (books or boxes work) so the screen, and thus the camera, is at or just above your eye level.

In placing the camera, consider its relationship to the screen on which you will watch the judges and other participants. Unlike a movie or entertainment video, screens for remote video argument display pictures of all participants in their simultaneous separate activities. When you look at a judge's face on the screen, you're not looking at the judge because you're not looking at the camera.

The greater the distance from camera to screen, the more your eyes will track off contact when you want them to track into contact. Please see part D (in the second part of this column next month), where we discuss in detail eye contact during argument. A logistical advantage of using a

laptop is that the camera is usually centered at the top of the screen on which you view the proceedings, but everything from webcams to full studios can be set up to produce the same result.

And again — test! Test! Test! Whatever approach or equipment you use — and whenever you change your setup — have a colleague stand in for you while you watch on another screen, or better yet record yourself using the setup.

B.5. Microphone and Audio

Although a custom mic setup is ideal, laptop mics seem to work reasonably well. But if your resources permit it, use a hard-wired peripheral mic tuned for human voice communication. See Part B.3 about the need for a separate mic for standing argument. Whatever your preference, test it in the environment you will use to be sure you're satisfied with the sound quality.

What about listening tools? Most lawyers report satisfaction with laptop speakers. Lawyers with hearing impairment should take extra care to adopt a satisfactory system. We do not recommend headsets or earbuds as a standard approach. The visual distraction for the judges probably overcomes the convenience of better incoming sound quality.

Wisdom lies in having an enhanced listening device ready to plug into a USB port if a judge speaks softly or the court's system is adjusted low. In scouting the court, counsel should try to discover whether it has a history of sound-projection issues.

Know how to mute and unmute with your equipment quickly, and learn the court's protocol. Some courts do the muting themselves when you are not arguing, while others will require you to do it.

Avoid having two connections open — a computer and any telephone — because this can cause piercing feedback and make you unintelligible. If you must be connected in two modes, practice the connection and learn how to avoid feedback, which may be accomplished by keeping your video connection muted throughout.

Remember that, like the camera, the mic is merciless. It can pick up coughs, sneezes, heavy breathing, typing, shuffling papers, chewing and even swallowing. Be muted when not presenting argument.

B.6. The Screen

The screen on which you see the court is the second-most important change wrought by the new medium. While the camera is unobtrusive during argument, the screen is literally in your face.

Set up the screen so you face it. See part B.4. regarding camera placement relative to the screen (and placement of both relative to you).

In Zoom, a common video application used by many courts, the app appears to choose where on each participant's screen to display the thumbnail pictures of other participants. Future upgrades might allow for resizing and relocating. Other video applications, such as WebEx, BlueJeans, and Microsoft Teams, might allow this directly or in connection with browser settings or a local app.

In the current state of technology, probably the safest approach is to use a full-screen gallery view showing all participants. Speaker view is less desirable because it can be flipped away from the speaker to another participant by ambient or accidental noise.

The advocate must learn to deal with multiple issues raised by the ability to see oneself. Whether driven by ego, anxiety or something else, there's a tendency to stare at our own images when we see them on the screen. Just as you need to practice looking into the camera, you need to practice not looking at yourself. Some courts omit your image from your own screen after a pre-argument check to be sure everyone else can see you.

The screen in the face makes it hard for advocates to be "in the zone." Only practice with the medium is likely to reinstate the peaceful mental state conducive to transcendent oral arguments.

C. Conclusion

It was a real pleasure sitting on this task force, and I thank its chair Jim Layton (Missouri), Chip Becker (Pennsylvania), Charlie Bird and Robin Meadow (California), Joel Bertocchi (Illinois), and especially Seattle Fellow Mike King, for the opportunity to serve with them.

"Always Appealing" is a column addressing current issues in appellate practice and recent appellate cases written by the lawyers of Smith Goodfriend, PS, a Seattle law firm that limits its practice to civil appeals and related trial court motions practice.

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