Mastering Video Arguments

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Oral arguments by video were the norm in most appellate courts during the COVID-19 pandemic. While many appellate courts returned to mostly live arguments a while back, many courts continue to hold video arguments. So, it's important for appellate counsel to recognize and prepare for the distinct challenges—and opportunities—of arguing by video. The substance of your argument, of course, won't change. But three areas are different—preparation, aesthetics, and technological issues. Here are tips for mastering each of these differences.

Preparation

Practice with the same application (e.g., Zoom) the court will be using; it helps you acclimate to the technology. It will make you more comfortable during the actual argument and give you one less thing about which to worry. One way to do this is to hold a mock argument using the same application. But you can always have a one-person "meeting" using the application to learn about it.

Make sure you understand how the court will conduct the argument. You can accomplish this by watching other video arguments held by the court, reviewing the court's website, or participating in a court-sponsored orientation. Plan how you will keep track of time–even if the court has a timer in a "box" on the screen, it may not be very noticeable to you.

Because the judges in a video argument can see only what you choose to allow them to see, you have more options for your immediate layout. You could have briefs, cases, cheat sheets, or the record available on nearby monitors or devices. Or you could have all the cases in a stack next to you, or flash cards with important points propped up in clear sight but outside the camera's scope. But you should consider whether the variance from your in-court routine will make you more comfortable or less and whether you really need all those extra resources at your fingertips.

Keep in mind that a video argument doesn't permit the same kind of support from a colleague that you might get from someone with

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you at a counsel's table in a courtroom. And having someone else in the room from which you argue by video might be awkward. Different lawyers will adjust to this difference differently—but it's important to think through it in advance.

Finally, you'll want to prepare for a bench that might be colder than usual. While plenty of appellate judges became more comfortable with video arguments as the pandemic went on, not all did—and sometimes the bench is anything but hot during a video argument. Be ready in case you have more uninterrupted time than you might expect. But, as always, be prepared to adjust in real time during the argument as you're met by a hot, cold, or lukewarm bench.

Visual Appeal and Aesthetics

By now, we've all done more videoconferences than we count. So, what's the big deal about aesthetics for a video argument? What's fine for a conversation with a client, or for passively participating in an in-firm meeting, is not fine for a formal argument.

For starters, *where* you will argue is a critical consideration. At home? At the office? Doing an argument at home presents its own set of obvious challenges—spouses and children making noise, dogs barking, unexpected deliveries or visitors, dodgy internet, and so on. Home is probably not the best choice. It was a necessity for some during lockdown, but not anymore.

Assuming you're doing the argument from your office, are you going to do it in your own office or in a conference room or shared space? Think about the conditions in the room. An office or room can be too light or too dark, and where the windows are located can make a difference. Avoid situations with too much light. But closed blinds may create weird lighting effects on video that you wouldn't expect.

Try to have a background that isn't busy or otherwise distracting. Many people seem to think that a background full of art or books is appealing. Maybe it is for another purpose—but it can be distracting for an argument.

If you use a virtual background, where you argue is less important. But a virtual background can distract as well, because they sometimes "cut off" limbs and show arm movements as blurs.

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And—let's face it—some virtual backgrounds can be cheesy.

Make sure the camera angle is at or very near your eye level. Too many lawyers use a bad camera angle and end up looking up or down at the camera. One way to get the camera angle right is to have the videoconference application open on the same device or monitor on which you're using the camera—this ensures you're looking straight ahead rather than casting sideways or up-and-down glances.

Think about whether to stand or sit. If you choose to stand, think about the necessary accessories (e.g., standing desk, podium) well in advance. Keep in mind that, whichever option you choose, you're stuck with it for both your argument and the other counsel's argument. Standing during your argument but sitting during your adversary's argument will likely mean you're partly or entirely out of camera range during part of the argument.

Position yourself vis-à-vis the web camera so that your head and shoulders are in the shot. You don't want to be too close or too far from the camera.

Technical Issues

Try to use a wired internet connection rather than wireless. Wireless internet presents a risk of dropping or buffering.

Be sure to close all other programs and notifications on your laptop or other devices you have in the same room. You don't want emails, notifications, or incoming phone calls making noises, or even popping up on your screen during the argument—which can distract you and may even make it temporarily difficult for you to hear a judge or opposing counsel.

Finally, think about possible interruptions and distractions that might occur given the space from which you're arguing. Are there other phones in the room that might ring? Can you lock the room so no one else can enter during the argument? If not, think about appropriate signage to deter someone from entering accidentally. Some planning to control for the unexpected will go a long way toward preventing the unexpected.

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