

OUTLINE

ACKNOWLEDGMENTS	V
INTRODUCTION	VII
Chapter 1. A New Reality.....	1
A. The Call to Action	4
B. The Short-Term and Long-Term Need to Master Remote Advocacy	8
C. Overcoming Our Resistance	11
D. Defensive Reasoning Block.....	11
E. Practice Provides Comfort.....	13
Tip—Find your technology source and your practice buddies.	14
Tip—Do a tutorial with a tech person.	17
F. Deeper Issues	19
Chapter 2. Dispelling Myths and Building Rapport	23
A. Myth 1—Remote Advocacy Is the Same as Live Advocacy, Just over a Screen	23
1. Choosing and Setting up Your Space	23
Tip—Give yourself plenty of time to choose and arrange your remote advocacy space.	23
2. What Does the Viewer See?	24
3. Dress.....	25
Tip—Dress more formally than normal to decrease incongruity.	25

4. Choosing Your Space: Lights, Camera, Action	27
a. Lighting.....	27
b. Background.....	29
Tip—Do a room scan with a friend.	29
c. Virtual Backgrounds.....	30
d. Camera Placement.....	31
Tip—Tape arrows near your camera as a focal point.	32
e. Sitting or Standing.....	33
Tip—Test sitting and standing with a colleague before you decide.	33
Tip—Practice standing and moving while a friend watches.	35
5. Can You Hear Me Now?.....	36
Tip—Always dial in early for any remote proceeding.	36
6. Other Audiences	36
7. Who’s Watching Whom?.....	37
8. Communicating Through a Screen.....	40
9. The Platform Evolution Curve	40
10. New Considerations	42
11. Combatting “Zoom Fatigue”.....	44
12. The Power of Distraction	45
B. Myth 2—You Cannot Read Body Language Through a Screen.....	49
1. Implicit Bias.....	55
2. Building Rapport in a Remote World.....	59
3. The New Office Meeting.....	60
Tip—Determine the best method for the first communication.	61
Tip—Maximize all means of communication.	63

Tip—Send an agenda and duration of call in advance.....	63
4. On the Call.....	64
Tip—Take a minute to focus before the call.....	65
Tip—Look at the camera not the person....	67
Tip—Use your words.....	68
5. Rapport 101.....	69
Tip—Small talk matters.....	69
Tip—Use your body.....	69
Tip—Use active listening.....	70
Tip—Avoid the distrust loop.....	71

Chapter 3. Preparation and Planning

Ahead.....	75
A. The Form of Proceeding.....	76
B. Check Local Rules.....	77
C. Where Is the Proceeding Being Held?	78
D. Platform and Information Security	79
E. Documents and Exhibits	81
1. Filing and Retrieval	81
2. How Many Screens?	83
Tip—Label yourself and witnesses for each proceeding.....	85
3. Demonstratives.....	86
Tip—Use demonstratives to combat audio/visual lag.....	87
4. The Screen Expectation	93
5. PowerPoint (and Other Presentation Creators): Message Enhancers	94
Tip—Print your slide deck three to a page with slide numbers.....	96
6. A New Way to Use Chat Features.....	97

7. Exhibits	99
a. Creating Exhibits	100
b. Handling Exhibits	102
c. Physical Exhibits.....	104
F. Zealous Representation in Remote Proceedings.....	106
G. Why the Distrust.....	107

Chapter 4. Pretrial/Pre-Proceeding

Conference	109
Tip—The way to keep your options open is to plan.	109
A. What Type of Proceeding?	111
1. Fully In-Person.....	111
2. Hybrid Proceedings	113
3. Fully Remote.....	115
a. Does Remote Change the Nature of the Proceeding	116
B. Start at the Beginning.....	117
C. Recording/Transcribing	118
D. The Oath, the Record, and Witnesses.....	119
E. Confidentiality	119
F. Exhibits/Demonstratives	120
1. Exhibits	120
2. Impeachment/Refreshing Recollection.....	122
3. Demonstratives.....	123
G. Objections	124
H. Timing.....	126
I. Summary Jury Trials	127
J. What If.....	128
Tip—Consider hiring a joint tech person for all parties.....	128

Tip—Agree on remedies for connectivity issues..... 128

1. The Positive COVID-19 Test..... 130
2. Stipulations and Agreements 132
3. Do Not Forget 133
4. Advocating for Yourself..... 133

K. What Ifs for Jury Trials..... 134

1. Representative Panels..... 134
 - Tip—Use questionnaires in stages..... 134
2. Jury Selection 135
 - Tip—Determine how many jurors your screen can display. 136
 - Tip—Be specific about time limits. 137
3. Approaching the Bench 138

Chapter 5. Presenting and Preparing

Witnesses and Depositions..... 141

- A. Attorney Client..... 142
- B. Start Early..... 143
 - Tip—Know if your court proceeding will be streamed..... 143
- C. Equipment Check..... 144
 - Tip—Do a “screen test” with your witness early to solve any problems..... 144
 - Tip—Gaze maintenance is more important than looking at the camera. 146
 - Tip—Practice with any exhibits the witness will use. 147
 - Tip—Be sure you can text your witness. 149
 - Tip—Have a photograph of your witness in case they only testify by phone..... 150
 - Tip—Clear the decks. 151

D. Examining Witnesses	152
1. Direct Exam	152
Tip—Go back to basics with your direct and use demonstratives to summarize the testimony.....	153
Tip—Spotlight the witness.....	154
2. Cross Examination	156
Tip—Allow the witness to fill the silence.....	156
Tip—Slow your pace.....	157
Tip—Plan for impeachment.....	158
Tip—Use the whiteboard to emphasize testimony.....	163
3. Expert Witnesses.....	165
E. Depositions	167
1. Witnesses	168
Tip—Consult with your court reporter and videographer first.....	169
Tip—Be sure to manage the screen.....	171
F. Managing Documents	172
1. How Many Documents Do You Have?.....	172
Tip—Consider delivering a pre-loaded tablet with the documents to the witness.....	173
Tip—Consider delivering a sealed folder or notebook with the documents.....	173
2. If Surprise Is Not an Issue.....	174
3. Use Annotation Features	174
G. In-Person	174
H. Hybrid.....	176
I. Preparing the Witness.....	176
Tip—Too much of a good thing.....	177
Tip—Be dressed for your close up.....	178

Tip—Consider being unmuted for objections.....	178
Chapter 6. Jury Trials	179
A. Honoring and Preserving the Right to Trial by Jury	179
B. The Jury In-Person	182
1. Trial Settings	187
2. Criminal Jury Trials	191
3. Trial in the Round	193
Tip—Practice with a mask, practice in your space.	199
Tip—Have your witnesses’ practice with a mask.....	199
Tip—Test visibility of exhibits, demonstratives.	199
Tip—Plan your courtroom movement.	200
4. The Pandemic Effect on In-Person Jury Trials	202
C. The Hybrid Trial	203
D. Remote Jury Trials	206
Tip—Watch remote jury trials, judge a remote mock trial.	206
1. Remote Jury Selection	207
Tip—Try to have the court hold the initial empaneling/troubleshooting session with jurors prior to start of trial.....	209
a. The Process.....	210
Tip—PowerPoint, or displayed questions and scales is a must.	210
Tip—Have jurors raise their hand and answer out loud.....	211

Tip—Have the jurors displayed by juror number rather than name.....	212
Tip—Have help.....	212
Tip—Practice with a large group if you can.	213
Tip—Display your panel on a TV or large screen.....	214
b. Handling the Panel	215
Tip—Know your time limits.	217
Tip—Develop a form for tracking juror data.	218
Tip—Record jury selection.....	219
c. Questionnaires	220
d. Beyond the Questionnaire	222
2. Additional Jury Instructions	224
3. Managing Deliberations.....	226
E. Final Tips	227
1. Think About How You Want Your Client Displayed Throughout the Trial.....	227
2. Always Manage the Screen and Focus.....	227
3. Watch Your Pace	228
4. Keep It Short	228
5. Keep an Eye on Your Panel	228
6. Acknowledge Technical Errors	229
7. Have Backups to Your Backups	229
8. Get Help if You Need It.....	230
Chapter 7. Arbitration, Mediation and Other Proceedings	231
Tip—Find out what technology your factfinder has available.....	231
A. Arbitrations and Administrative Hearings.....	232
B. Remote Proceedings.....	234

C. Witness Examinations.....	235
Tip—Post a witness introduction and summary.....	236
Tip—Create witness-based exhibit folders and pictorial directory.....	238
Tip—Return to cross examination basics.....	238
Tip—Invite questions from your factfinder....	240
D. What Is the Record?.....	240
E. Agreements.....	241
F. Mediation.....	242
G. Can It Be In-Person?.....	244
H. Hybrid.....	245
I. The Remote Mediation.....	246
Tip—New questions for your mediator.....	247
Tip—Make sure everything in your file is scanned/digital.....	248
Tip—Prepare an enhanced mediation submission.	248
Tip—Re-evaluate your setting.	250
Tip—Practice and test your softer mediation advocacy skills.	251
Tip—Prepare your client.	252
J. Sharing Information	253
K. Summary Jury Trial	254
Tip—Resolve all objections during pre-trial....	256
Tip—Use fewer more layered, complex slides.....	257
Tip—Practice your presentation.	257
Chapter 8. Hearings, Bench Trials and Appellate Arguments.....	259
A. In-Person	260
Tip—Rethink your visit to the courthouse.....	260

Tip—Be prepared to justify a request for an in-person hearing to trial.....	266
Tip—Consider a bifurcated hearing or trial....	266
Tip—Plan the arrival of witnesses.	267
Tip—Evaluate which testimony must be in- person.....	268
B. Hybrids	269
C. Fully Remote	271
Tip—Are you sure you want a hearing?	271
Tip—Consider your judge’s technical proficiency.	272
Tip—Ask rather than assume, over-prepare rather than under-prepare.....	273
Tip—Consider preparing a witness list for the court.	274
Tip—Create digital exhibit binders.	275
Tip—Start earlier finding and preparing witnesses.	275
Tip—Be prepared with cases, orders, findings.....	276
D. Work with the Court Reporter	276
E. The Phone Still Works.....	277
F. Appellate Arguments.....	282
Tip—Choose your space carefully.	283
Tip—If standing post notes on the wall.....	284
Tip—If you sit, practice delivering your argument.....	285
Tip—Tape the names of the justices on the top of your screen as a focal point.	286
Tip—Consider using the shared screen.....	287
Tip—Check and recheck your audio.	288

Chapter 9. Best Practices for Remote Technology	289
A. Connection Is King.....	289
B. Audio 101.....	290
Tip—Looking your best on video.....	291
Tip—Using a remote background (Zoom).....	296
C. Screen Sharing Best Practices	298
D. Digital Exhibit Stickers for Remote Meetings	304
Tip—Avoiding Zoom fatigue.....	304
E. Visuals and Remote Advocacy.....	306
1. Three Keys to Creating Visuals for Remote Settings.....	307
2. Deconstructing Demonstratives	308
a. Sign Posts (Road Map).....	308
b. Anchor/Orientation Visuals (the Parties).....	309
c. Callouts/Pull Quotes (Documents).....	311
d. Timelines/Calendars (Sequences)	313
e. Testimony (Direct/Impeachment)	315
f. Charts & Graphs (Data Visualization).....	316
g. Bullets and Text (Case Law & Concepts).....	317
i. Consider Going Vertical.....	317
ii. Break It up into Logical Sections....	318
iii. Use Icons and Side Bars	318
Chapter 10. Deep Dive into Zoom	319
A. Setting up an Account & Logging into Zoom.....	320
1. Setting up an Account.....	320
2. Free vs. Paid Accounts	321

3.	Downloading the Zoom Client App.....	322
4.	Logging In	322
5.	The Zoom App Interface.....	323
B.	Adjusting Your Zoom Settings and Preferences	325
1.	General Settings	326
2.	Video Settings	327
	Tip—Looking your best on video.	333
3.	Audio Settings	335
4.	Screen Sharing Settings.....	339
5.	Chat Preferences	341
6.	Virtual Backgrounds and Video Filters ...	342
	Tip—Using a virtual background.....	345
7.	Recording Preferences.....	346
8.	Profile Settings	347
C.	Setting up and Hosting a Meeting.....	349
1.	Quick Starting a Meeting	349
2.	Scheduling up a Meeting Through the Online Dashboard.....	351
	a. Schedule Your Meeting.....	352
	b. Scheduling a Recurring Meeting.....	353
	c. Customizing Your Meeting Options.....	354
	d. Invite Attendees	357
D.	<i>Important: Host Settings You Should Know About</i>	357
E.	Participating in a Meeting	364
1.	Different Views.....	364
2.	Custom Gallery View Organization	365
3.	Pinning/Multi-Pinning vs. Spotlighting/ Multi-Spotlighting.....	366
4.	Navigating the Zoom Environment.....	368

F. Diving Deeper into Zoom	371
1. Adding/Inviting Participants to a Meeting	371
2. Chatting with Participants	372
3. Sharing Screen	374
a. Basic Screen Sharing Options	375
b. A Note About Showing Video Clips	376
c. Advanced Screen Sharing Options	376
d. Files Screen Sharing Options	378
i. Sharing Screen Toolbar	378
ii. Annotation Toolbar	381
4. Breakout Rooms	383
G. Customizing Zoom with Powerful Shortcut Keys	384

Chapter 11. Remote Advocacy for Law Students and New Lawyers	389
A. A Message to Law Students and New Lawyers	389
B. “Learning Advocacy Remotely” vs. “Learning Remote Advocacy”	389
C. The Dynamics of the “In-Person” Courtroom.....	391
Tip—Be more formal than less.	392
Tip—Address courtroom etiquette in the pre-trial conference.	393
Tip—Test your audio with each new witness.	395
Tip—Make a formal studio.....	396
Tip—Use the internet.....	398
Tip—Say “yes”.....	398
Tip—Move your cases.	399

Appendix. Remote Advocacy Resources.....	401
A. General Resources	401
B. Zoom Resources.....	402
1. Lights, Camera, Action	403
2. Virtual Background Image Resources (Free)	403
3. Digital Exhibit Stickers for PDFs	403
INDEX.....	405