

The Science of Remote Advocacy:

Advocating to Judges Using Web-Conferencing

Ken Broda-Bahm, Ph.D.

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Online trials are still relatively new, but we are getting savvy at the game of online conferences.

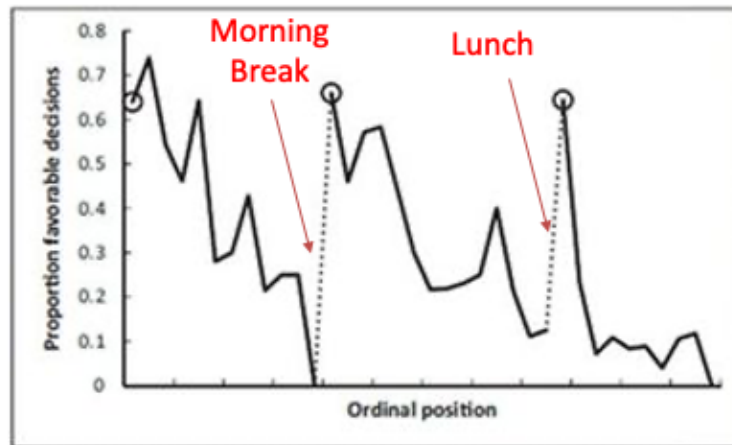
The same goes for virtual appearance before a judge.

One possible lingering effect of our pandemic year might be the realization that online communication is not all that bad. Some aspects of online presence may persist when it is simply practical and not medically or necessary.

The title for my initial presentation focuses on "The Science of Remote Advocacy," but there is little research so far on the differences online. So I am using 'science' in the sense of systematic approaches, informed by what we know.

Higher Cognitive Load

Proportion of Decisions Favorable to Defendants (Prisoners)



Time →

[Danziger, Levav and Avnaim-Pesso \(2011\)](#)



Some research we do know about focuses on the fact that the conditions matter, including to judges. This is research in Israel, published in the National academy of Sciences. This chart is about research on judicial decision-making, and specifically on something called “cognitive load” and the effects of degree of effort on decision-making.

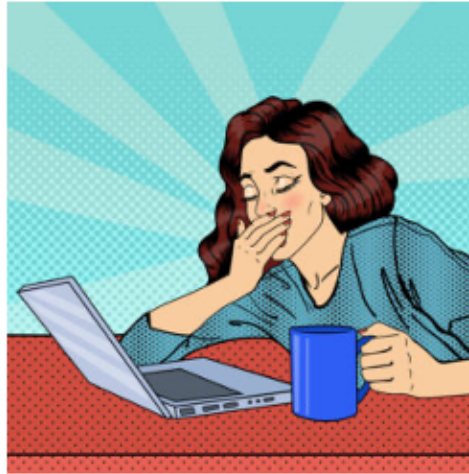
The horizontal axis shows time of day, while the vertical axis H focuses on the proportion of decisions favorable to the defendant, with higher being better for the defendant.

Notice that it declines over time, but with two rebounds: One for morning break, and one for for lunch. The implication is that judges become overloaded, but then recharge with a break, and it has an extraordinary effect on decisions.

This research is not about Zoom, but I believe that there are similar effects on exhaustion caused by web conferencing, along with the possibility that it starts lower and descends faster.

Source: Danziger S, Levav J, & Avnaim-Pesso L (2011). Extraneous factors in judicial decisions. *Proceedings of the National Academy of Sciences of the United States of America* PMID: [21482790](#)

Zoom Fatigue



Bailenson, 2021



There is also emerging empirical research showing that web conferenced communication is more taxing on your cognitive load – Zoom fatigue. This is why two hours on a web conference can make you as tired as all day at an in-person conference.

The reasons why:

- Your screen -- All eyes on you.
- You're on it -- A constant mirror
- Face focus -- More things to monitor

Best Practices:

- How You Look
 - How You Speak
 - How You Prepare



Here are some best practices on communication. Some are general, and some are specific to the medium.



I HOW YOU LOOK



First, the practical question of how you place yourself on the stage.
The stage is the four corners of your screen. So give some attention to what
you're presenting.

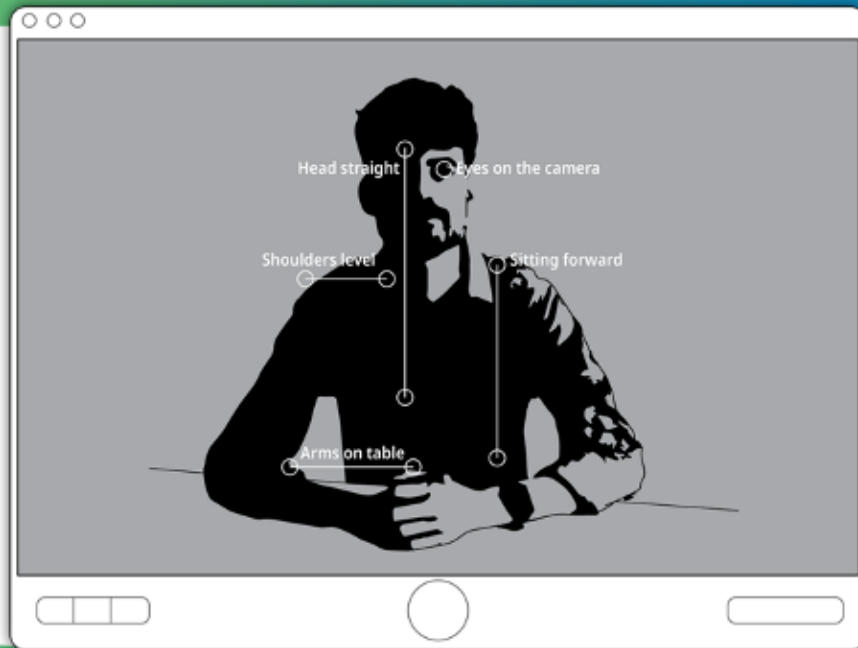
I HOW YOU LOOK



- Frame It
- Light It
- Level It
- Mic It

I think that presentation boils down to a checklist of four.

Frame It



PERSUASION
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This relates to camera's position. Despite the name of the most common conferencing platform, it is not possible or easy to "zoom" in or out, to ensure that you are filling up most of the camera's frame.

So, you need to use proximity: Get the camera position just right for this kind of shot, a video deposition shot.

- Head straight
- Eyes on camera
- Shoulders level
- Standing or Sitting forward

Make sure you are able to stay centered on the screen, even when you have a little natural movement.

Frame It



 **PERSUASION**
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The background also matters.

This man, for example, may have been told that it helps to have books in the background.

The bottom line is that your background should be natural and non-distracting.

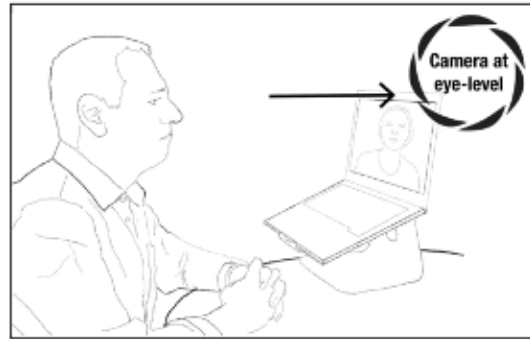
Use a neutral wall. For an informal meeting or presentation, it is okay to see part of your home (as long as what is visible is neat and in good taste). For formal presentation, you want to avoid distraction, so a neutral background like a plain wall, or a 'credibility background' like a plant or bookshelf is best.

Light It



The next biggest consideration is light: You need more than you expect.
Natural lighting is great, so if you can sit facing a window.
You want a source that is somewhat in front of you.
You don't want to be backlit, because the camera will auto adjust, so looks worse than it would look in real life.

Level It



Single biggest problem I see is a laptop on table, looking up at the speaker. You should really try to avoid that. The standard “upward gaze” from a laptop camera to the person sitting immediately in front of it is not the most flattering or the most natural way to be viewed.

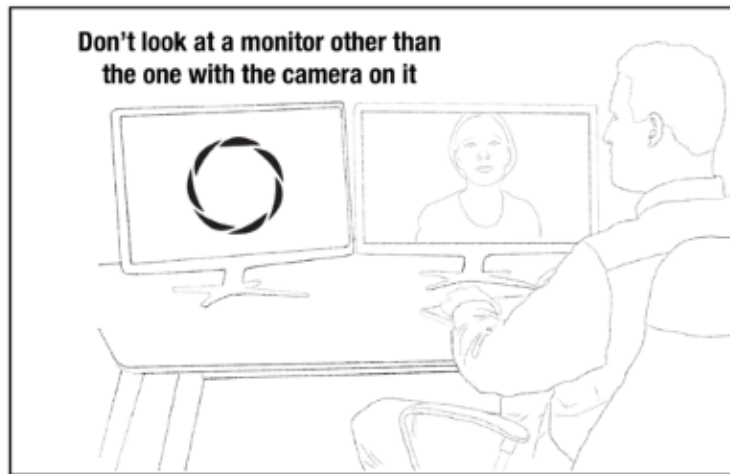
Instead, buy an inexpensive stand that will bring the laptop to eye-level.

Eyes on the Camera



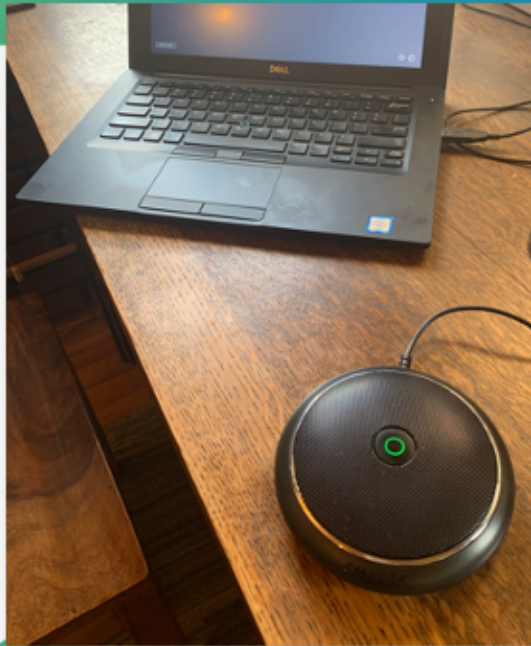
This shows my own laptop with a post-it showing an eye over the camera. Note that the camera is not on the monitor, and is not even where the little green light is. The camera is next to that. For the best impact, don't look generally at the screen, but at the lens itself if you can, especially when making critical points or wanting to connect to your target.

Multiple Monitors



If you have multiple monitors, make sure you are looking at the one that includes the camera.

Mic It



Sound is one of the biggest obstacles. So buy an inexpensive microphone. That not only gives you better quality, but also gets microphone away from the laptop's fan, which can be a significant source of noise.

Your 'Studio'



Here I am showing my own setting for presenting. Note that I have the laptop raised, a light-source in front of me, separate monitors for notes or other programs, and anything that could be unprofessional or distracting (the guitars in this case) are out of the shot.



II

HOW YOU SPEAK



The next point focuses on what you're actually saying.
That does not change a lot (content is content), but it does change a little in
some important ways.

Slow, With Short Pauses



You want to be a bit slower. Online conferencing can be a problem when there is a slight audio or video lag. Another person's chair squeak could cut off several words. There is also the absence of the forms of nonverbal cues we would normally use to decide who has the floor.

The solution isn't perfect, but it is to slow down and pause.

Facilitate Interruptions



The advantage of the pause is that it allows interaction.

It can be difficult to manage over-talk –

In a live setting, when someone cuts in, there is brief over-talk, and we hear both voices. Services like Zoom, however, will select one and only one audio source, so an attempted interruption might be missed.

But you can't ignore that, especially from a judge.

One idea set up a rule of thumb with your judge:

Your honor, because it is more difficult to manage turn-taking during web conferencing, I suggest that you give me a visual signal if you have a comment, a question, or any other input you want to add as I present. If you just put up your hand like a stop sign, I will stop right away.

Don't Be Too Hot for Zoom



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There is also the fact that online conferencing is a little more of a cool medium (lower resolution and intensity). You want to be calm and conversational in response. Fire and brimstone can be more off-putting when it seems directly in your face. Also people have become accustomed to the medium as a way to talk to friends, family members, and colleagues, and as a result, it is a much more conversational type of mode.

Too Hot:

- Continuous Gestures
- Movement
- Raised Voice
- Pointing
- Contact with Table/Lectern
- Overlong Pauses



A few things need to be reduced or eliminated on Zoom:

Behaviors that we associate with passion and drama in the courtroom, but they are often not good ideas for judges to begin with – Even less of a good idea on Zoom.

Instead: Different Energy, Not Less Energy

- Vary
 - Pitch
 - Rate
 - Emphasis
- Don't Read



But you don't want to be bland. You want to use a different not less energy. During virtual presentations, your audience will focus more on your voice. So change your pitch, speed, tone, and delivery style when you're presenting. Avoid being monotonous. Speak in a way that is slow and even, with some variety. Emphasize key words. Don't read, even if the audience can't see what you are reading from.

III

HOW YOU PREPARE



Final quick point

Check the Technology, Know the Platform



Test run with others on your team.

If you have an online argument, then you should have an online murder-board.

Use the same set-up and the same platform.

Know how you'll get documents you don't have, and how you'll get internal messages from your team (i.e., a separate channel).

Active Practice



The self-view can be good and bad: It is like performing in front of a mirror. It allows you to check out how you come across. For some people, that is a distraction and carries too much self-consciousness. If that is you, then turn off your self-view. But if you're not distracted, then that window can provide a good reminder to occasionally check on how you look and are coming across.

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There is inevitably some trial and error. A judge recently told me (in the context of online jury trial) that adapting has been like trying to build a bicycle while riding it. But we are learning quickly, learning more, and getting better. In some ways, it is an exciting time to practice.