



The Many Pros And Few Cautionary Warnings Of Preparing A Witness Via SKYPE

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I've been preparing witnesses virtually for more than three years and I just love it. I was a fairly early adopter of this form of witness preparation, have worked with dozens of witnesses and their lawyers this way, and have learned a heck of a lot about the process.

I decided it is high time for me to tell you why I love it, when and how to do it, and a process to help you decide when it isn't right for a particular case or witness.

History

First there was the videoconference. They still exist, I know – but that was when I rejected the idea of virtual witness preparation out of hand early on.

Why?

Because video conferencing was never set up for the intimate relationship that is vital for a good witness preparation session. It was set up for meetings with a dozen people in one city (for example, Los Angeles) talking to a dozen people in another city (for example, Atlanta). A videoconferencing set up was (and is) the equivalent of a wide shot in the movies.

What is a wide shot? Imagine one of those scenes where all the filmmaker is doing is setting up where we are. The train station in Atlanta with all those wounded soldiers in Gone With The Wind. It is a wide shot of a group of extras. Where oh where is Scarlett and what is going on with her face? Who knows?

And what about the point of view of that witness who appears to me like a far away extra? How does he or she see me in my videoconferencing center? They can't make out my features. Half the time they can't hear me. Again, I'm an extra – maybe in

the Los Angeles movie Pretty Woman. I'm not Julia Roberts. I'm the size and as clarity of one of the dozens of women in the "deep background" shot of the polo field or walking around and shopping on Rodeo Drive.

Extras in different movies don't have intimate relationships with anyone in their own movie, let alone in different movies.

I had tried preparing witnesses via videoconference a few times in the late 1990's and early 2000's. I couldn't see the faces of the witnesses. They couldn't hear me. Atlanta in 1863 was trying to communicate with Beverly Hills in 1990. It was deeply unsatisfying. The assessment of the session by the lawyer and by me was "it was better than nothing". It left such a bad taste in my mouth that I decided preparing people virtually was ridiculous and I would never do it again.

The thing about being a self-righteous Midwestern protestant (yes, that is who I am by birth) is that once you make up your mind about something that is that. A bad experience always brings out the worst of the stubbornness of who I am by birth. And so many years went by and I paid almost no attention to the improvements that were being made. Especially in personal computers. Facetime, SKYPE – this whole movement of clearer cleaner and more intimate virtual face-to-face interaction just passed me by.

And then Persephone happened.

Persephone is my older granddaughter. She was due in June of 2011 right here in Los Angeles. Right in the middle of what was a big trial season for me. I know, I know – when isn't it a big trial and deposition season for me? I never have less than 20 cases going to trial and new requests for helping prepare folks for depositions, trials, etc. come in several times a week 52 weeks a year. I love my business and how it hums along. BUT...

I had originally planned on taking off a few weeks after she was born and was imagining I was only going to be taking on local work in the weeks before and after her arrival. I warned all my out of town clients who were counting on me to work with their witnesses that we needed to schedule two weeks before the due date or two weeks after the due date. Inevitably, invariably, one didn't. And the trial was starting the second week of June. In a state far, far away. He said to me, "How about SKYPE?" I, of course, in a brilliant marketing move said, "Well...I did that once and it was 'just okay'. If you'll do it with no guarantees that it is nearly as effective as being in the room with me and you won't hold it against me if it is a disaster and will still use me in the future then I guess the answer is...reluctantly...yes."

We scheduled the first session for June 9. We set aside several hours – like four, I think. I joined SKYPE. We did a test run. The lawyer and I. Drumroll...hey...it wasn't that bad. In fact, it was good. I could see him clearly through the little camera on my laptop. He could see me clearly. We could hear one another perfectly. Maybe...this would work. It certainly wasn't nearly as horrible as that god-awful Max Headroom Extras On The Set video conferencing experience.

June 9th dawned.

The attorney “called” me and we were looking at one another. He moved his chair out of the way and the witness slid onto my screen. Nervous, hesitant – just like many witnesses are when we are first in the room together. I usually come closer when they are scared...but I wasn't in the room...or was I? “Scoot up so that I can just see your head and the top of your torso on the camera,” I said. He did. I did the same. Magically, we were as intimately in “the same space” as if we had just moved our chairs closer to one another in the room.

He spoke to me freely. He confided in me. The attorney, who was off screen for me but sitting right next to the witness added to the conversation from time to time. Then it was time for mock examination. I said, “I'm the jury” just as I did and do in every in person session that gets a witness ready for a jury trial.

Briefly I panicked. I realized that I couldn't capture the witness on “video” and play it back as part of the critique. So I said to the lawyer, “Take extra careful notes on content.” I whipped out a writing pad. I have been taking notes on my laptop for years since I can read my hand writing SO MUCH BETTER when I type it. Too bad I sucked at math and science – my hand writing screams “medical school”.

Luckily I remembered a very important fact – I am so old and have been doing this for so long that I PREDATE VIDEO. Yes, long before I was “taping and playing back” I was just imitating witnesses. Brilliantly, I might add – because I am a fabulous actor. I had come to realize that actual taping and playing back was superior when I was in the room with a witness. But technology wasn't really there yet...so my imitation of the good, the bad and the ugly was going to have to be “good enough”.

We started. We hummed along. Two hours later we were done. We signed off with the lawyer saying, “We have to do a lot more of this next week with all my other witnesses...okay?” I hung up, and sat back. I thought, “That was truly the next best thing to being in the room.”

Equipment and Personnel – K.I.S.S.

I really like what I have – a laptop computer with a great camera. This allows for the ultimate intimate “sharing” relationship between the witness and me.

Sometimes the lawyers in the room find this frustrating. I have noticed this happens when there is more than one lawyer in the room. They want to see me, too. Unless they are directly looking at me they become distracted and don’t understand how to “lean into” the process. So they let the witness deliver into a camera, but they put me up on a big screen in a conference room. The first time this happened the witness said, “Wow, you are huge. Did you know that?” Of course I thought she was rude and referring to my weight and then I realized that she meant my face was taking up the better part of a large wall in a conference room.

I now request that the following not happen: Don’t throw me up on the big screen. Totally ruins the intimacy.

Also, I am really loathe to have “tons” of lawyers in the room or “tuning in” remotely. Yeah, yeah, yeah. I know you are used to it. But I can’t handle a bunch of lawyers in the room virtually. You know I can make the room “perfect” for the witness when I’m in the room with several lawyers.

My current solution is that the following happens: no more than two lawyers can be with us for the session and they both need to be in the same room that the witness is in. Why? Total focus on the witness.

At the same time, there needs to be at least one lawyer in the room at all times – it’s not like privilege goes away because this is a fancy kind of a “call”. Plus – you know that if I am working with a witness and you aren’t there you aren’t going to get what the learning point is of the conversation between me and the witness. Which is vital for you as the lawyer.

Finding The Right Connection

Right now I rely on two kinds of connection: SKYPE and GOOGLE HANG OUT. I just call it all SKYPE just like I call all facial tissue KLEENEX and all photocopying XEROX. And there may at some point soon be even better connectivity that allows me “in”. Can’t wait.

People often ask me which I prefer. I prefer whichever one gives us the best connection. Sometimes that is SKYPE. Sometimes that is GOOGLE HANG OUTS. A test run determines which is which. I have a wonderful client who lives only 350 miles away and SKYPE cuts out on us and GOOGLE HANG OUTS works like a charm.

Another client who is 3,000 miles away works with SKYPE and not GOOGLE HANG OUTS. I don't pretend to understand why. I just know that at this point in time, neither works for everyone in some cases, and in most others, both work perfectly.

I am sitting right next to the physical equipment in my office that connects me with the internet. I have had some frustrating moments where things worked perfectly in another room of the lawyers office but in the conference room where they want the virtual session to happen it is a nightmare of connectivity. Right now I find that the closer you are to the point of your connection to the internet the better. Some folks aren't so into WiFi and connect with me with their laptop plugged into a physical connector. Fine. Whatever works is always my motto.

What You Can Do Virtually That You Can't Do In Person

Should we start with "save money"? The cost of hauling me to your office with travel time and travel expenses and then paying for the day of witness preparation is costly. That's reality. There is a wonderful client of mine who lives in the Midwest. I used to come out only for big cases – once about every year and a half. Now I help prepare every one of his clients for deposition and trial. I was looking at the numbers and I figured out that for less money, he gets me for every case. I have local clients who choose to buy a couple hours of my time for all their cases rather than the cost of local travel time plus work time for a few of their cases. Again, I ran the numbers and realized that those folks, too, are saving money.

Let's go to "walk out". I was helping to prepare a witness on the other side of the country for her deposition. I looked at her and thought, "Dang. She's high." I said to the lawyer when the witness had to leave the room almost immediately after our session started to go to the bathroom (hel-LO?), "She's high." The lawyer didn't see it. Witness comes back in the room. We face one another – literally my face and her face filling one another's screens. I say, "Are you high?" She says, "Well, you know – I'm so sad I just can't stand being straight." I say, "Well, honey, I won't work with you if you are high. Your lawyer is spending too much money to have me work with you. If you decide that you are willing to straighten out and work with me and stay straight until this case is over....fine. But until she calls and tells me that you have made that commitment to her and to this case I am out of here." And I turned off the screen. Poof – she disappeared and I disappeared. Total cost to the lawyer? I think 15 minutes. Total cost saved if I had been in that room? Thousands of dollars. Actually, it is worse than that. If I had been in the room I never would have said, "You're high, this is over." Of course not. I would have been there, three time zones and several thousands of dollars in. We would have worked with her high. Of course. And we never could have had the result we had in the case. Why not? She straightened out, made the commitment to the lawyer, rescheduled the

SKYPE session, had a successful SKYPE session and the case was settled successfully. Would she have gotten the message that she had to straighten out if I had been in the room and reinforced the fact that you can be high and if there is enough money on the line that you can get away with it? I dunno. Nor do I know if she is still straight. God, I hope so.

A final great thing that you can do virtually is do follow up reinforcement sessions to your initial “in person” sessions. Some times the deposition or the trial happens within two of the preparation session and the witness is on and off before three weeks are out. Great. But....sometimes cases get pushed. Like until next year. The work that has been done in person can be reinforced with a SKYPE or two next year. Or what if during trial the witness needs a pick-me-up? That can happen easily during trial either after court or on the weekend during the trial.

When Is In Person Better Than SKYPE

One of my favorite models is preparing multiple witnesses in the same case during the same session. This works only sometimes via SKYPE – like with a family, for example. Not so much with a number of clients who aren’t related to one another in a business case. Kind of like having too many lawyers in the room – people are distracted when it isn’t “their turn” as opposed to learning by example as well as by “doing”. So I proceed with caveats here.

Again, when there are going to have to be multiple lawyers in the room in person is just better. One partner, two associates, one corporate counsel...hey...much better if we are all in the room at the same time with that witness literally instead of virtually. I’ve gone into detail about that in the “Equipment and Personnel” section of this article.

Another thing that I’ve run into in the past year or so is that some lawyers “get it” better in the room. The vast majority of the lawyers I now work with sometimes in person and sometimes via SKYPE started out exclusively as “in person” clients. The math shows that 37 years of in person and virtual experience minus 3 years of virtual experience equals 34 years of in person experience. There are now lawyers who are my clients who only know me through SKYPE. I’ve met them and their clients virtually at some point in the last 3+ years. Then, magically, we need to prepare a witness in the room together. Just the other week it was summed up brilliantly by one such lawyer. “Wow – now I get it.” I said, “But your witnesses have always gotten it.” He said, “Yeah – but now I really do, too.” Okay. Makes sense. I can honestly say that I think that the witness with whom we were working would have been just as good if we had prepared her virtually. But I don’t know that he would have “gotten” where I was going with how I was advising him on how I wanted him to order the direct examination. Nor the questions I was advising him to use. Interesting.

There are some people who just can't be reached by my charming personality coming at them through the screen and need me, literally, to hold their hands. Touch their forearms. Feel my body near them. Yep, people who are "touchy-feely" (aka kinesthetic processors) can have a harder time with virtual preparation. But I find if I point out that they need that "touch" and the lawyer is able to provide that touch this can be solved. But some lawyers don't like to touch people. Got it. I have no qualms about it. So then I need to come in.

Finally, there might be a virtual session that just doesn't "take" and so I need to fly in. This is why just like any witness preparation session; I recommend that it be booked at least 2 weeks before the "event". That way if we need to book more virtual sessions or I need to fly in we have enough time to figure that out.

Conclusion

Virtual witness preparation is effective, efficient, cost saving and sometimes "better". I am so grateful that technology has allowed it to be a part of my practice and I hope that you will find it to be helpful in yours.