

TIPS FOR NAVIGATING VIRTUAL TRIALS AND DEPOSITIONS

DECEMBER 2, 2020

IN A RECENT INTERNAL PANEL, BAKER DONELSON BROUGHT TOGETHER SOME OF ITS SEASONED LITIGATORS FOR A “BEST PRACTICES” DISCUSSION ON NAVIGATING THE VIRTUAL TRIALS AND DEPOSITIONS FACED THROUGHOUT THE PANDEMIC. THE CONTENT WAS SO HELPFUL THAT WE WANT TO SHARE IT WITH OUR CLIENTS AS WELL.

REMOTE DEPOSITIONS



Jamie Ballinger, Of Counsel in our Knoxville office, moderated the first panel focused on the topic of remote depositions. The panel featured shareholders **David Gevertz**, **Brent Young**, and **Mark Baugh**; they have all been in the trenches of remote depositions, both prior to and during the pandemic.



David Gevertz
Shareholder | Atlanta

With respect to the technology, we’ve learned the lesson that you can’t necessarily assume that the court reporter you have liked and used forever is equipped to handle remote depositions or that the technology is cookie-cutter and is used by everyone in the same way. Also, IT support used by court reporting companies varies from company to company and there are often audio problems or freezing of screens that can’t always be attributed to Wi-Fi.

We’ve had court reporters show up with something other than a normal computer laptop in order to facilitate the deposition, which has not worked out well. After some trial and error, we’ve landed on Veritext, which of course, is a nationally known court reporting service; the reason that we use them is two-fold: First, they have great technology with respect to their exhibit share, where you preload the exhibits electronically and roll them out one by one to the witness, the court reporter and opposing counsel. As you use it, you can decide not to use certain exhibits that you’ve loaded, and you can highlight the exhibits on the screen. And second, they have great customer support.

With respect to logistics, it’s important to negotiate those issues in advance. Who exactly is going to be in person with the witness, if anyone? Who’s going to be remote? There are considerations when you have a protective order in place. You may have people dropping off and then coming back on during certain confidential testimony or testimony that, for whatever reason, might be

attorneys’ eyes only. Deposition notices that we both issue and receive set out a lot of these ground rules in advance. They also set out things that you would never typically consider in a deposition notice such as who’s going to supply the laptop? What do you do in the event that there’s a weak Wi-Fi service or stream? There needs to be a speakerphone available for audio backup in case the microphone on the computer isn’t working well.

The final consideration is whether or not you will videotape the deposition and, if so, whether you want to video it through the service or if you prefer a live videographer. We found that the latter tends to work particularly well when your video freezes or you have similar issues.

Jamie: I will add to David’s last comment. When you are evaluating whether or not to video using the platform or videographer, make sure to check the local rules and state specific rules on what sort of criteria you have to meet for videoed information to be admissible and to be authenticated because that will vary among jurisdictions.

Our second topic is court reporter and witness issues. Brent, how, if at all, do you use court reporters differently in the remote deposition context, and how do you maintain control of the witness and ensure integrity of the deposition when you are remote?



Brent B. Young

Shareholder | Johnson City

Like most of us, I suspect that the remote deposition skills and considerations that we're learning about are going to continue to apply during the pandemic and will be the wave of the future, certainly from a cost standpoint. As David mentioned, not all court reporters are created equal, particularly when it comes to electronic depositions. You've got to find the right one. For lack of a better phrase, and I don't know if the court reporters like me for doing this or not, but in addition to their normal court reporting duties and all the technology considerations, I use the court reporters, basically, as my sergeant at arms during the applicable deposition. Because I've had issues in putting an electronic exhibit in front of a witness because the witness doesn't have his or her glasses on or they can't read the screen or it gives them a headache, I send out hard copy, prenumbered exhibits in a notebook to the court reporter a few days before the deposition. They have all the exhibits that might possibly be used though we may not use them all.

I ask the court reporter to review them to be familiar, so they can put them right in front of the witness. I really have leveraged the opportunities with court reporters to not only manage those exhibits, but also I've even had court reporters in the homes of the deponents, which may seem a little crazy, but I am nervous when a deponent is sitting there alone in their home. I am suspicious by nature, and I guess all of us are as attorneys. I worry that there's going to be some kind of back channel communication and coaching going on. So far, I have been lucky enough to have a court reporter in the room every single time there is a deposition as a third-party. They don't represent anybody, but they can control the exhibits and, in my experience, having a person there will automatically result in the deponent acting better. They're not going to engage in the types of shenanigans that sometimes we see. They're not going to get involved in coaching and the like. We've had to shop around a little bit, but we've landed on some court reporters who do a fantastic job for us.

And with regard to ensuring the integrity of remote depositions, I use a series of questions or statements that are specifically tailored to electronic depositions as my introductory outline. For example:

- I always like to affirm on the record that any coaching during the deposition is inappropriate and could result in potential sanctions, particularly in an electronic context which could include texting, emails, phone calls, and – my favorite – the off-camera attorney giving hand signals, or like our friends in Houston (with all due respect to the Astros), making noises or giving signals as to what to say.

- I affirm that I reserve the option to ask questions about what was discussed during any breaks. In South Carolina, where I practice a lot, there's a rule that says you can't discuss the case or strategy about the case during a break in a deposition, and that those discussions, even when they're with an attorney and client, are subject to inquiry when you get back to the deposition. If there's a court reporter present, sometimes we don't do this, but we ask some deponents who have not shown the propensity to be trustworthy take their devices out and put them on the table in camera view so that we can see they're not getting texts or getting coached or what have you.
- We affirm that if anything seems suspicious, we reserve the right to seek judicial assistance. We rarely, if ever, do this. But sometimes just saying that will cause people to behave better.
- We also ask anyone who's on the call to identify themselves and to state specifically for what purpose they are attending the deposition.

Once the deposition has started, we pan the room to make sure we know everybody who's there. We emphasize the need to not talk over each other.

As David mentioned, sometimes technology will fail. At the beginning of a deposition, I like to outline what we're going to do if that happens or what we're going to do for re-communal. Those are some of the things, candidly, mostly learned from the school of hard knocks. But, again, I think it's the wave of the future and when the pandemic is over, I think the majority of depositions probably will be in electronic format.

Jamie: Mark, how do you prepare differently for a remote deposition? How do you handle exhibits before and during a remote deposition?



Mark A. Baugh

Chief Diversity Officer | Nashville

Before the pandemic, I did a fair amount of remote depositions, and I would do two things. One, in preparing, as Brent noted, I would pre-mark my exhibits and put them in a notebook, send it to the court reporter, and I would put them on SharePoint. On the morning of the deposition, I would make the SharePoint available to opposing counsel so he or she could share it with his or her client. During this pandemic, I have still used SharePoint and not the notebooks as much to send to the court reporter, but I still pre-mark the depositions.

If I'm using Webex, then I share my screen so everyone can technically see what I'm speaking about while I'm asking questions about exhibits. If I have an issue where people are fiddling with their glasses or they're saying they cannot see it, then I'll resort to reading what I need into the record and ask them a question pertaining to whether they understood what was in the document, because usually it's not the entire document –it's just parts of a document that we're really focusing on. With the pre-marking of exhibits, I tend not to get rigid about whether I'm getting them into evidence in the manner in which I pre-marked them, but I still stay with a numbering form for the purpose of the court reporter because it's usually easier for him or her.

Those are my keys to making sure that I'm prepared for the deposition and that everyone's on the same page as far as exhibits.

Jamie: What is your one tip on how to have the most successful remote deposition?

Brent: I would say preparation. It goes without saying you're going to be prepared for a deposition. If you're like me, if it's a live deposition, look at a notebook the night before or the morning of. Make sure you get a good feel for the case, and know the exhibits, and then you just kind of fly by the seat of your pants. Obviously, you need to be well-prepared, but based on experiences in the past, you have a good feel for the rhythm and expectation how things are going to go.

That's not the case in my experience with electronic depositions. You really need to be well-prepared and not only know all that stuff that you would for a live deposition but be prepared for all the technological snafus that could happen. Be prepared to deal with shenanigans. Again, the better prepared you are, the less nervous, because if you're like me, I've been taking depositions

for 20 years in person and now I'm doing it remotely. It's hard teaching an old dog new tricks. So, the more you can prepare, the more you can think of contingencies and be ready for anything that goes wrong or goes right, etc., the better.

Mark: My tip would be making sure that the court reporter you're using is going to be on the same page with you on how the deposition is going to feel. And so, another component of the remote deposition that we had really discussed is if there's going to be a videographer to make sure that everyone's on the same page. Brett mentioned this about [noting]who's in the room. Court reporters are generally good about making sure that everyone who's in the room is on the record, that they're announced, and parts of it are going to be a video deposition. You know, that comes in handy when they ask who's in the room to identify themselves. But my take would be to make sure you're on the same page as the court reporter as far as technology, how exhibits are going to work, and how the deposition is going to run. If everybody is going to be remote, then the court reporter is remote, and one is going to be in the room with the witness, it's going to only be the court reporter.

David: Well, again, maybe we've just had some bad luck with some really unethical people. But, candidly, I think that there is far less prep going on of witnesses than used to occur and I think that's what leads to some of the bad behavior that we've seen in the course of depositions. And so again, I reiterate do not let anyone get closer to your important witness than you. If everyone's remote, that's fine, but the witness cannot be selectively germophobic and concerned about your germs, but not their counsel's. As long as there is a very clear stipulation about who is sitting where, then generally everything else is a technological issue that can be worked through.

VIRTUAL TRIALS/HEARINGS



Shareholder [Thomas H. Barnard](#) from our Baltimore office moderated the discussion on virtual trials and hearings, which featured [Benjamin West Janke](#) and [Diane Festino Schmitt](#). Baker Donelson has quite a bit of experience within the firm related to virtual trials and virtual hearings, including evidentiary hearings.



Benjamin West Janke
Shareholder | New Orleans

I've had at least three major experiences, each of which couldn't have been more different than the other. One was a dispositive hearing in state court, which I'm told was probably the first one to be done virtually in the state, which happened early in the pandemic. Another was a week-long trial in bankruptcy court in the Eastern District of Louisiana, and the last was an all-day

hearing in federal court in the Eastern District of Louisiana. For each, we handled exhibits differently. So, I've seen the good, the bad, and the ugly, in terms of how hearings and witnesses are handled, and learned that coordination with your court to know what their expectations are is always going to be very important.



Diane Festino Schmitt

Shareholder | Baltimore

My video trial arose in April and involved an emergency petition in Maryland State Court where a daughter sought to have herself appointed as a guardian of her elderly mother who was a resident at one of our assisted-living facility clients. The daughter was trying to get the mother out of the facility because she was convinced that she was going to contract COVID there. There was a family dispute because the mother had given a power of attorney to her son and not this daughter.

We had a little bit of a “ripped from the headlines” situation as the case progressed, with lots of discussion of what COVID was doing to ravage nursing homes. It was early in the pandemic, and I think my case was one of the earliest, certainly in Baltimore County, and the judge essentially told us that this was his first experience with this sort of case. The case wound up taking four and a half full days of trial.

Tom: Let’s talk first about preparation and then the conduct of the hearing. Obviously, each court has a different set of rules and capabilities. Ben, what’s your process to prepare, from a technology standpoint?

Ben: Well, practice makes perfect. There are little things that you might never think about because they’re not in your usual deposition prep outline, for example (and luckily this was an opposing counsel witness who did this), a witness thought it would be cute to join a virtual hearing using with a Zoom background with an exotic Caribbean beach. It did not go over well at all with the federal judge and frankly, it went well for us. So, little things like that you might not ordinarily think about. This was bankruptcy court, where we had several trials, and we were given a number of tips and tricks of what the court had seen, such as making sure that if you were joining by telephone and you had Zoom for the video and telephone audio, making sure that your phone was actually plugged in and charged, so as not to rely on your batteries, making sure your Wi-Fi was good, etc.

Tom: Obviously dealing with the technology at the federal court is very different than the Baltimore County or Baltimore City Circuit Courts. Diane, how did you prepare yourself regarding the technology capability and platforms?

Diane: Maryland Circuit Court was using Webex as its platform and since that is Baker Donelson’s platform, we’ve had a fair amount of experience with it. That put me tremendously at ease because I was already familiar with how it works. But we did encounter one particular attorney who could not figure out how

to mute and unmute throughout a five-day trial. This attorney also had their video camera positioned [in an unflattering way] and it was very distracting. The judge said, several times, “You’re on mute. Can you please press the button? It’s at the bottom of your screen.” He kept repeating this and also suggesting that counsel reframe the video picture. The judge was giving counsel every opportunity and counsel wasn’t taking it. And I think at the end of the day, it colored the judge’s view of that attorney’s presentation because counsel was not listening to what the judge was asking him to do or complying with it.

Ben: One of the things that I was apprehensive about leading up to one of the first big trials was how to present ourselves in our virtual courtroom. Our witnesses were scattered throughout the country and the same was true for the other side. I just candidly asked the court in advance, “Do you prefer us to sit? Do you prefer us to stand when we’re presenting?” And we were fine to do it either way. We just didn’t want to do something that was incongruent with what the other side was doing. Knowing these expectations going into the trial is helpful.

Tom: In the last virtual arbitration where I was the neutral, no one looked at me. Diane, how have you prepared witnesses for virtual testimony?

Diane: In our case our witnesses were the nursing home administrators who were essentially third-party witnesses to the case. They were obviously in the middle of a pandemic and we tried desperately to get them to do video prep and they just said we don’t have the bandwidth for that. They would talk on the phone, but were not going to be able to do video prep. So, we had to take the clients where they were and we then coordinated with counsel, who had subpoenaed them as witnesses and said, “Will you agree that they can participate by telephone?”

Counsel did agree to that and then we had to get it approved through the court and, under the circumstances, the court also agreed. So, our prep was different than it might have otherwise been given the circumstances, but I think this points out the need to remain as flexible as you can with your witnesses and to try to negotiate as much as you can with opposing counsel and also to remain flexible with the other counsel about mechanics and process. In this case, even though it was fairly acrimonious, we were able to get the parties to agree on a process for these witnesses and a couple of others who also appeared by telephone.

Tom: Ben, can you weigh in on witness preparation, for example, how you prep the witness for the need to leave you time to make objections?

Ben: That was one of the more cumbersome elements. But it is just a matter of making sure the witness knows to pause longer than they would during an in-person deposition. I think we've all told witnesses that, no matter how quickly you know the answer to the question, you should pause before answering. Allow me a chance to raise an objection because if I don't, no one is going to have that chance. If you have competing voices on the line, and inevitably you will, you want to be able to raise your hand or look at me if I'm on the screen so I can do this as I verbalize my objection. So, look for those cues as much as possible.

Tom: Did you get to prep witnesses over video or was it by phone?

Ben: Even though we had spoken to our witnesses ad nauseam and had planned on them flying in when we were going to have an in-person trial, the first time I had laid eyes on any of them, it was on a Zoom call at the trial.

Tom: Do you have a checklist you go over with witnesses about what to wear, the video background and things like that? What did you discuss before the trial?

Ben: All the things that you would think are obvious, such as having a simple background, not having a bunch of pictures on the wall behind you or being in a room that's quiet and secluded, not having a dog barking in the background, making sure your telephone line is clear, making sure all your devices are plugged in...

Tom: Obviously, exhibits can be one of the harder parts. I know in federal court, there's a very standard practice for how we do exhibits with pre-admission, things like that. Ben, can you talk about the different ways you handled exhibits for trial?

Ben: I have seen it done three different ways at three different trials, and here is the one I like the most. In federal court, as is increasingly customary, you have joint bench books. They're not necessarily pre-admitted but they are chronologically ordered and what the court had asked us to do was combine those exhibits. We had 250 of them, so, it was not a simple feat to combine them all into a single PDF that is bookmarked, so if needed, you can navigate to a particular bookmark throughout the PDF. Also, you have an index. In our example, we had a single 3,000-page PDF, and I had an index and my outline notes that indicated that exhibit number 77 started at page 1,000, etc.

The court had a designated person who would display this PDF for the duration of the trial and navigate page by page at the instruction of the lawyers. The more prepared we were, the smoother it looked and, candidly, the other side wasn't prepared. I could say, "Mr. Witness, please turn to – will the court please turn to PDF page 1000, which is exhibit number 77?" And if I had those two points in my outline, we were able to go through quickly and really had no issues whatsoever. The only other issue – we had a fair amount of impeachment evidence, which we knew we were going to encounter, so we had asked the court in advance how they would want to handle that. They were very accommodating and they just said send any impeachment evidence you want to present to the law clerk via email. So, we had multiple computers in our trial room to be able to accommodate all of this. And then those were loaded up separately from that single PDF that I referenced earlier. This worked well. Even though we spent all the money to have a three-volume bench book printed for our judge, he wound up looking at the screen with the exhibits right next to the witnesses' faces and it was very effective.

Tom: Diane, tell us a little bit about your experience with exhibits.

Diane: In our case the judge scheduled a pre-call before opening arguments with all counsel to ask the attorneys to come together on a protocol for how documents were going to be handled during the proceeding. And although there wasn't a lot of agreement on most things during the trial itself, the parties were able to come together on a process and we decided the proponent of a particular exhibit would submit them to the group the day before they were going to use it – actually, the night before – and then counsel scheduled a brief call to discuss whether there were any issues among them with respect to the document. So, basically a PDF would go out with the documents that were going to be used and then they would be discussed. Now, with a relatively small document case, I think even though it was multiple days of trial, we didn't get any higher than about 45 or 46 exhibits. So, that process was workable in smaller case like this one. I'm not sure that it would work anymore or in a larger context. The judge, however, made it clear to everybody that it was imperative that we come up with something that everybody could agree upon because he didn't want to be fussing with this piece of technology while he was trying to navigate this trial from his kitchen table and his court reporter was in her living room. The documents were being seen in a lot of places where we might not normally.

Tom: Did you get a chance to do a closing argument summation in this case and if so, how did it go?

Diane: I had a very short summation because whatever the court ruled regarding the patient staying or leaving, we (the nursing home) were going to follow. The facility didn't want to take sides, but needed to make sure discussions didn't occur about the care that was given to this resident because the daughter who had brought the case raised lots of inflammatory statements. Our points were largely to ensure that the court understood she was getting excellent care for as long as she was there and everybody loved her and that it was a great place for her to be. She was happy and healthy while she was there. And we wanted to make that clear.

Tom: Ben, what were the closing arguments like for you?

Ben: We were ordered to present closing arguments on the last day, and then when we showed up the court, instead, asked for post-trial briefs. So, we had to convert the closing argument that I had prepared into a post-trial brief. But we were ready.

Tom: It's interesting that neither of you had a jury trial, which is a whole other aspect – voir dire and use of technology and even the sidebar conversations with the judge during the objections would be a different challenge.

VIRTUAL JURY TRIALS

[Michael E. Clark](#) and Tom Barnard participated in a virtual mock trial, which had a jury. They discussed that virtual trial experience and how the use of jury and bench conferences and other elements were different than in the real world, particularly the voir dire and the technology and the voting.



Michael E. Clark

Of Counsel | Houston

This was an institute that is typically an in-person institute that I co-chair. But, with the pandemic we had to set up a virtual event. We did it over three days and tried to make it a realistic experience. We got a consultant to bring in a jury panel that would be representative of a federal district court panel for a False Claims Act case.

The first issue was how to put all the faces together where you want them; that took some tinkering, and other questions that came up pretty quickly were, "Well, what about the background? How do we have appropriate backgrounds and how do we get people that are not computer savvy to change their background images?" My takeaway from the experience is that it works. One major drawback is that you're sitting, not standing and using your body and incorporating all of the subconscious things that you see typically in a trial courtroom setting – I'm a student of body language, and in a virtual setting, you lose it. You can see the faces, but you can't see bodies. And of course, you can't really control the courtroom like you can in person.

I read many years ago that we should visualize the courtroom as a stage and there are certain power positions and if you have tried enough cases in federal court, you know that there's the "one finger on the podium" rule and you have to navigate around that. And then we have The Brady Bunch phenomenon where people are getting very tired on Zoom. Part of the issue is you're not getting the visible clues – the sub textual clues. It's harder to control witnesses for sure. People get bored and zone out. But I think we're going to be living with this for a while and federal courts will adapt. It's like depositions. You have to prepare hard.

Tom: I think a couple issues are the technology issues that we didn't encounter before, such as when you need half the screen stable, with all the jurors visible, while the other half changes for the speaker. And the typical WebEx experience doesn't really have that option. So, having a split screen, with the ability to have some people always visible and other people changing as well as breakout rooms to talk to the judge are important to consider in a jury trial. Another issue we encountered was the ability during voir dire to track the jury members by number, when you have these little names, but not everyone's screen looks the same as to where people are sitting. It was difficult to select jurors and ask them questions.

VIRTUAL ARBITRATIONS

Virtual arbitrations are also important, and shareholder [Linda A. Klein](#) from our Atlanta office told us just a little bit about what she's learned in her arbitration experiences.



Linda A. Klein

Shareholder | Atlanta

Everything everybody has said already will translate very well from arbitration to trial. Here are my primary tips:

- The part about having a plan and a backup plan is really important, and practice sessions are only part of the planning. Your detailed backup plan has got to be useful. You should always discuss the threshold critical question: What happens if one party has a technical issue during the proceedings? It may be that, as a last resort, we do this via phone. That's always my backup plan for mediations. But before we get to the last resort, know there are options such as, when the video still works but the sound is uneven, have a dial-in number so that we can supplement the video. In that case you've got to mute the sound in all the computers to be sure there isn't any feedback because that can be a big problem. Just have everything established way in advance so everyone knows what to do.
- Everyone needs to have an emergency contact in case you think everything is fine and you're just chatting away, and it turns out nobody else can see you. They've got to have a way to contact you – it could be your cell phone, your secretary's cell phone, or all of the above, you just have to have it all written out in advance. If you're in mediation or arbitration, everyone should have the neutral's personal email address, cell phone, even home phone numbers for people who still have them. At our firm, we've got some really great tech people and they're so happy to help us in an emergency. You want your tech people to know that you're having a very important trial or arbitration. And this is probably obvious, but I'm going to make this point: Don't schedule complicated video proceedings before a holiday. Your tech advisors, or the support teams for the opposing party or the court may be on vacation.
- Another important element is to make it very professional. Don't use exotic backgrounds. Even if it's ADR or it's trial, treat it like an in-person trial. You've got to show you're serious about the process. This is very important to your client. Dress as you would in the courtroom, not just from the waist up. You're going to get up for breaks and when you do, your whole body is going to be seen.
- When you're on break – this is really, really important – turn the microphone and the video off. In the last virtual arbitration where I was the neutral, one of the parties kept their camera and microphone on through the whole lunch. I heard everything – how they thought it was going, that they thought I was very detail-oriented, who ordered the ham and cheese...
- Keep distractions out of the room, including your pets and other humans. Think about what the judge and what your clients and the witnesses are going to be seeing in the background. If you watch cable news, you see all those authors and they're being interviewed and they display their books prominently in view. My point is you want people to see what you want them to see, which is not your college dorm room poster or your dirty dishes.
- If you take nothing else away from today, please take this one point: Make eye contact with the judge or the jury. In the last virtual arbitration where I was the neutral, no one looked at me. Please look at the camera. You need to persuade the judge. Look at the judge. I know it's hard. The camera is not a person. You want to look at a person. That's normal. Practice this if you've got to, but don't stare at your notes. Don't stare at your iPhone. Don't stare at your keyboard.

MANAGING A VIRTUAL TRIAL IN OFFICE

[James E. Edwards Jr.](#) is Baker Donelson's Baltimore office managing shareholder, and recently helped manage a very large, virtual trial that's continued on for months based out of the Baltimore office. Jim discussed, from a management perspective, what to expect and how much lead time a virtual trial needs.



James E. Edwards Jr.

Shareholder | Baltimore

I feel a little mundane following all of the sage advice that we just received from people who've actually done those since I was not on the trial team. We did have, because of the pandemic, a very significant proceeding with a lot of dollars at risk involving a state attorney general bringing an action for regulatory violations that supposedly had occurred against a large landlord. We have had a team of three lawyers and two paralegals in trial from mid-September until yesterday, fittingly, when our defense rested in the case. It struck me then and now that from a management standpoint, this is a bit like taking a major case on the road, but with some important differences. We obviously had to have the technology in hand instead of being able to show up at a courtroom in order for this to work. And to Tom's point, we started at least a month before this trial began assembling what this team was going to look like, even before we knew the case was actually going to go. On that team were me and our office administrator. We have a facilities planner on the staff. Obviously, IT people because the technology is very important, and we also had dedicated practical food support people because these people are effectively living together as you do on the road for two and-a-half months in this trolley. But, then they got to go home and go to their own beds at night, except for the client rep. Messengers, copy scanners, lots of logistics, repeated meetings and rehearsals to make sure that this would all work out well over the month run-up to the case. We were lucky in that we have a very large conference room, which we can't use because we can't gather that many people together, and so we were able to set up inside that room individual workstations for each of the lawyers, which were counsel table. But interestingly in looking at it today, it was more than that. As you can see out to the side, their snacks, their coffee mugs, and their sweater vests, and things like that that they had with them as they were actually trying this case. We created a war room for them much like we would've had on the room with technology to support them. We had a person who was dedicated every day to providing food and sustenance for them in any way that that was needed. We needed to create redundancy among

the IT people, who were already very stressed during this difficult time, so that they would always have connectivity with them, and with anybody else on the trial team that they needed. And then because you just have to expect the unexpected, which you would normally do at trial. Only the number of things that could go wrong here were even more significant than you might normally encounter on the road at trial. There was a point during the trial in which the administrative law judge was prompted to ask someone, "Excuse me, sir. But are you driving your car while you are testifying?" And I guess the point that it raised is that, like good trial lawyers, we do have to think about how preparation is different for a trial like this. We certainly created the proper spaces Linda just described for our witnesses for our part of the case, which were admittedly fewer in number, to appear so that they looked professional and together. And if Tom will indulge me, I'll share one other quick thought. A lot of the rules that apply as a trial lawyer to regular trials apply here. People have touched on this. I had another lawyer share with me that she had done a trial from another firm and had failed to invoke the request for witness sequestration. And sure enough, during the course of the trial, it became apparent that two key witnesses were in the room together and one off-camera was coaching the other on camera who abruptly a few questions after he had given answer "A" was asked the question again and gave answer "B." Now, I think that probably didn't help their case, but it certainly was a failure to view this as just like any other trial where you have to touch through all the things you would do, including whether you need to sequester witnesses who might not ought to be in the same room together while each is testifying.

Tom: Thank you very much everyone. If you have any follow-up questions for any of our panelists, please use this reference and the vast experience here at Baker Donelson. Thanks again and have a great rest your day.