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Doom, Zoom, and Transformation in the Year of COVID

**Reflections on the Durability, Practicality,
and Efficacy of Remote Depositions**

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DOOM, ZOOM, AND TRANSFORMATION IN THE YEAR OF COVID:

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“Out of crisis springs opportunity.”

Inspired by the words of a fortune cookie

It was one year ago (March 13, 2020) that Nature flipped the switch and unleashed the COVID virus, instantly changing life and the practice of law as I had known it. Within days I was visiting a website called “Zoom” and taking tutorials on how to conduct “remote” conferences and depositions. It was revelatory and life altering. Within a month, I was taking Zoom depositions and participated in both a hearing and mediation by Zoom. Zoom depositions, hearings, conferences, and mediations have now become the new norm – at least in my practice.

The purpose of this paper is not to instruct anyone on how to conduct effective remote depositions, but instead to share my experiences and insights in the hope that they may help inform your practice and inspire even more innovation and effectiveness than you no doubt have already experienced in conducting depositions remotely.

Disclaimer: Throughout this paper I will make reference to “Zoom.” I am not getting any promotional fee and am not promoting Zoom. There are other providers who offer videoconferencing including Web-Ex and Microsoft. I do not reference or offer any observations about these other platforms only because I have not used them extensively. While I use Zoom specifically, I mean it more as a generic reference to video-conferencing platforms in general.

Ironically, it was over thirty years ago that I first wrote a paper for the State Bar of Texas on taking and using video depositions at trial entitled “*Youtubephoria*.”¹ At the time, the practice of videotaping depositions was somewhat novel in Texas and virtually unheard of in other states. That experience has helped inform how I have approached scheduling and conducting remote depositions. I view remote depositions as merely a stage in the evolution of non-stenographic depositions: telephone, video, satellite, and now video-conferencing.

¹ This and other papers I have written on deposition practice are downloadable from my firm’s website, www.cuttingedgejustice.com/papers

While COVID has fundamentally altered my approach to taking depositions, I actually conducted my first “remote” deposition over thirty years ago. There was a company in Houston with a facility that provided equipment and screens for uplinking and downlinking by satellite. We had a deposition scheduled for a key expert witness who resided outside of Boston. There was a terrible snowstorm, and he could not travel. He, however, could walk to a Federal Express store down the street which he agreed to do. From there, he “uplinked” to the satellite and we downlinked the transmission to the screens before us. Incredibly, the reception was quite good. We had the witness on one screen and exhibits on the other. All the attorneys were in the same facility and the deposition proceeded seamlessly and successfully. Nonetheless, it was a one and done experience. The company went out of business, and I did not attempt anything similar until April 2020.

If you want to know the truth, my first pandemic-induced Zoom deposition was more memorable for its clumsiness than its effectiveness. It was like trying to learn ballroom dancing (which I have never been able to master). But I think a lot can be, and in this case was, learned from missteps.

My first impression on seeing the various video boxes pop up on my computer screen was oddly of “Hollywood Squares,” and the introduction to the “Brady Bunch.” Everyone was looking out from their screens with the same expressions that one would expect of people just getting ready to shave or put on makeup. The initial interaction was both awkward and hilarious. I could not help myself; my mind raised back to the Who rock opera, “Tommy.” “Can you hear me?” “Can you see me?”

I think, however, I am getting ahead of myself. Before anything popped up on the screen, we had to figure out how to invite everyone to the party. What should the notice say, and how do we get connected? Thank goodness for my incredible paralegal and tech savant, Kelly, and our excellent court reporter. Between them, we figured it out and slogged forward.

THE NOTICE

199.2(b)(3)

(3) Alternative Means of Conducting and Recording. The notice must state whether the deposition is to be taken by telephone or other remote electronic means and identify the means. If the deposition is to be recorded by nonstenographic means, the notice may include the notice required by Rule 199.1 (c).

199.1 (b) and (c)

(b) *Depositions by Telephone or Other Remote Electronic Means.* A party may take an oral deposition by telephone or other remote electronic means

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