

Cross-Examination/Impeaching a Witness

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Social distancing and mask mandates disrupted the conventional wisdom that a lawyer had to be in the same room as the witness to conduct an effective cross examination. The biggest differences between in-person and virtual examinations are what you see and what you hear. [Colin Cabral](#) discusses his experience cross-examining witnesses by video in depositions and arbitration proceedings.

Transcript

Colin Cabral: I was surprised after conducting virtual examinations—and I’ve done probably about two dozen now—at how effective they can be at really damaging the credibility of a witness.

The biggest differences between in person and virtual examinations are what you see and what you hear. What you see on the screen is a picture of the witness’s face right in front of you.

You can see every micro expression, any sign of discomfort and stress. And you can process that information, to follow up on certain questions, to press a little bit harder on certain issues and adjust your strategy.

You can read every micro expression and sign of discomfort or stress.

Colin Cabral, Partner, Litigation

In terms of what you hear, usually in a virtual platform everyone is on mute, except for the attorney asking the questions and the witness. Silence after a question seems louder, and what I mean by that is it has more of an impact. It seems to last a little bit longer than it would in an in-person proceeding.

There are some things about the legal system that are so ingrained in the system and in as us as trial lawyers, where we love to be in court with a beautiful courtroom and judges on the bench and arguing in front of our adversary in a process that's been around since the beginning of the country. So I don't think in-person proceedings or trials, jury trials, bench trials, evidentiary hearings will change all that much. I do see a change going forward with depositions. Clients and attorneys have recognized their value in virtual depositions, how they can be cheaper, more efficient, easier to schedule.

I think going forward they will be strategically employed—virtual depositions, that is—as a way to save money and really reduce litigation budgets.

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