

Professional Perspective

Virtual Trials and War Room Design

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Virtual Trials and War Room Design

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There are no treatises or handbooks on how to conduct a trial during a global pandemic, but health and safety concerns have to be your primary concern. There is still a lot we do not know about Covid-19, so it is important to focus on the basic principles we do know—stay socially distanced from the people you need to be around, and critically assess who actually needs to be in the room where it happens. In complex trials with a large team of lawyers, paralegals, hot seat operators and other support staff, setting up a trial “war room” during a pandemic is a significant undertaking.

Setting Up the War Room

With health and safety in mind, the first step to setting up a successful war room is meticulous planning. Contacting and involving key members of building/office operations early in the process will benefit you in the long-run. It is unfortunately fairly easy to take certain things for granted, but everything good that happens in the world happens because of someone's efforts—someone needs to turn on the lights, someone needs to turn on appropriate air ventilation, someone needs to order food, someone needs to connect monitors to printers to keyboards, the list goes on. If you take care of these details early on in the process, you will luckily reach days where all you need to worry about is putting on a compelling case.

The optimal war room is designed in a way that streamlines communication while allowing members to focus on their specific assignments. Setting up tables and workstations around the perimeter of a large room, facing inwards, allows everyone to look up and see everyone else when necessary, but also gives people the ability to focus on their own screens.

Almost as important as the war room itself is its relation to everything else. The more everything is located in one place, the less interaction the team has with others outside of the war room. In effect, the war room becomes almost like an office version of the “bubble” similar to those created by professional sports teams. The ideal war room will be close to other rooms with other team members, the bathrooms, the printers, food, and, of course, the elevators. So, if in the office, the war room may not be on the floor the senior partner usually sits on; it may be on the conference room floor where everything intersects.

Masks and personal hand sanitizers should be provided at every station in the war room. Obviously wearing masks and washing your hands is more important as ever if a team of people are going to be in the same room for every day of trial.

Lastly, unlike a traditional trial war room, a virtual trial war room is where the lawyers actually participate in the trial. That means, at any given time, the trial could be in session and having the distractions of people coming in and out of the war room is a serious concern. Therefore, it is important to label all entrances to the war room with signs that alert people that a trial may be in session.

War Room Conveniences

Convenience is the name of the game when it comes to the war room. When not constrained by the limitations of the counsel table in a courtroom, why not take full advantage?

Ideally, the war room will have several large projection screens on which you can project the virtual trial proceedings. While attorneys can pull up the video feed on their individual computers, the ability to also have the proceedings on the large screens is invaluable during witness examinations, particularly when reviewing documents introduced at trial.

Similar to a traditional trial, in a virtual trial each party is able to use call-outs and highlights to focus the attention of the witness and the court to particular language within the documents. Having documents projected onto larger screens has the obvious advantage of being much easier to read.

Another perk of using large projection screens is that, while the examining attorney questions the witness, another team member can assist the hot seat operator (the third-party controlling document and video projection, who should physically be in the war room) by pointing to the sections of the documents that need to be highlighted. This practice provides clear guidance to the witness and the court and helps ensure minimal interruptions in the flow of examinations.

As mentioned above, it is best practice for the attorneys in the war room to have their own workstations throughout the trial. In addition to limiting the number of people touching the same equipment, this allows the attorneys to customize their workstations to accommodate varying preferences and needs.

The lead attorneys who address the court and examine the witnesses may wish to have a single laptop with the necessary video and audio capabilities, as this allows for fluid transition from one on-screen presence to another. All notifications should be disabled to eliminate distractions from the virtual courtroom. And, just like any other trial, the attorneys should still have printed copies of their outlines, transcripts, and key documents at their fingertips. This arrangement allows the examining attorneys to somewhat recreate a traditional trial setting.

Meanwhile, team members who are not video participants in the trial should take the opposite approach—the more computer screens, the better. For example, a workstation with two desktop monitors and a laptop allows for significant multitasking; one screen can be dedicated to the real-time reporting feed, the second to monitoring communications from other team members, and the third to research.

Audio and Visual Considerations

One Person on Camera at a Time

By this point, you have likely been on a Zoom videoconference that resembled the Brady Bunch opening title sequence—full of talking heads and no one knowing where to look. Parties and the court want to avoid this at trial. Thus, unlike in a courtroom where all team members are present and visible at all times, in a virtual trial the court will likely order that only one attorney from each party be on camera at a time. This results in, at most, visibility of only a handful of participants in the virtual courtroom—the judge, the witness, and the attorneys for the two (or more) parties.

The Zoom platform (or similar video platform) allows for smooth handoffs from one attorney to another, as the exiting attorney can simply stop their video feed and go on mute. This is the best approach to a virtual trial, as it both limits distractions and allows others to engage in a variety of tasks behind the scenes.

Limit Distractions

Another recommendation for a successful virtual trial is to utilize a virtual background. It serves the practical purpose of hiding the mountains of binders and boxes that will inevitably be in the war room. But, more importantly, it can be used to provide visual references for the court. Consider creating virtual backgrounds that include the name of your client. That way, even when one attorney cedes the virtual podium to another, it is always apparent to the other participants in the virtual courtroom which attorney represents which party.

Noise-canceling headphones are also a must-have. With everyone else in the war room wearing headphones, the examining attorney can present the case normally without their computer's microphone picking up on the feedback from six other computers also broadcasting the same virtual proceeding. Meanwhile, the other team members in the war room are able to comfortably listen to the proceedings through headphones, negating the need to rely on the speakers of the examining attorney's computer being loud enough to project throughout the war room.

Multi-Tasking

Perhaps the most significant advantage of a virtual trial is the flexibility it allows the trial team. Because likely only one member of the team will be visible to the court at any given time, the rest of the team can engage in a number of other activities simultaneously. Contrast this with the traditional trial, where the attorneys sit impassively in the courtroom during that day's proceedings, and then spend their nights in a flurry of research, drafting, and continued preparations for future stages of trial.

Depending on the size of the case, one to two team members should be dedicated to supporting the examining attorney. Among other things, these team members should work with the hot seat operator to ensure that the proper documents, call-outs, and highlights are presented on the screen to the witness, while also fielding in-the-moment requests to find a certain document or fact-check testimony that the witness just gave. Another team member might be dedicated to keeping track of exhibits introduced and whether the documents are moved into evidence.

At various points throughout a trial (in-person or virtual), the parties will make various objections on which the court then requests briefing. In a virtual trial war room, when this occurs, trial members can immediately begin the necessary legal research and drafting. This ability to multi-task allows the trial to move forward without delay, as the parties are in the best position to complete the requested briefing promptly.

Again, the need for likely only one attorney to be on screen at any given time frees up other team members to conduct witness preparation for later stages of trial, which affords the ability to work around witnesses' schedules. This sort of flexibility is crucial if you are dealing with out-of-state witnesses and preparing them to testify in a virtual trial.

Communications Inside and Outside the War Room

A hybrid approach to the war room is ideal—meaning, some members of the team will occupy the war room, some are in offices or locations nearby, and others are completely remote. Within the war room itself, attorneys can communicate with one another normally, so long as the one attorney actively participating in the virtual proceedings remembers to mute their microphone. Alternatively, note-passing and emailing are other fine options for relaying real-time feedback. Regardless of the form of communication, a well-designed war room provides for the ability to react fluidly and immediately to issues as they arise.

Attorneys in the war room necessarily need to communicate with team members who are stationed elsewhere. It is practical to have a set of attorneys located physically nearby, who can be contacted in person or through email and come in and out of the war room as needed. Similarly, it is important to have a set of essential staff members physically nearby—i.e., audio/visual technology specialists and members of the firm's printing department, among others—who can quickly provide assistance to those in the war room.

There can also be a subset of attorneys and case team support who operate completely remotely. This practice works so long as those team members closely monitor communications and are ready to relay information as appropriate to the in-office team. It is recommended that attorneys that will be video participants in the virtual trial be in the war room rather than operate remotely. This eliminates potential issues such as household distractions and ambient noise. Additionally, being in the war room allows attorneys to consult their team members and make real time strategic decisions.

Practice Points and Takeaways

Again, while nothing is certain during a global pandemic, you should keep in mind and strive for the following:

- Health and safety should always be a priority. The optimal war room setup allows for people to stay socially distanced but also be 100% engaged in the proceedings.
- A well-designed virtual courtroom facilitates offline communications among in-office team members and online communications to other team members (either physically nearby or remote), which allows for dynamic strategy calls and the flexibility to engage in a number of activities simultaneously.
- Technology is everything. The computer setup must be functional and meticulous, the internet connection stable, and have a plan for if (and when) technology fails. Strive to have your audio and visual technology specialists nearby and ready to assist. And, work closely with your hot seat operators or whomever controls how documents and video get presented in the virtual trial—they steer the ship, but you direct the course.