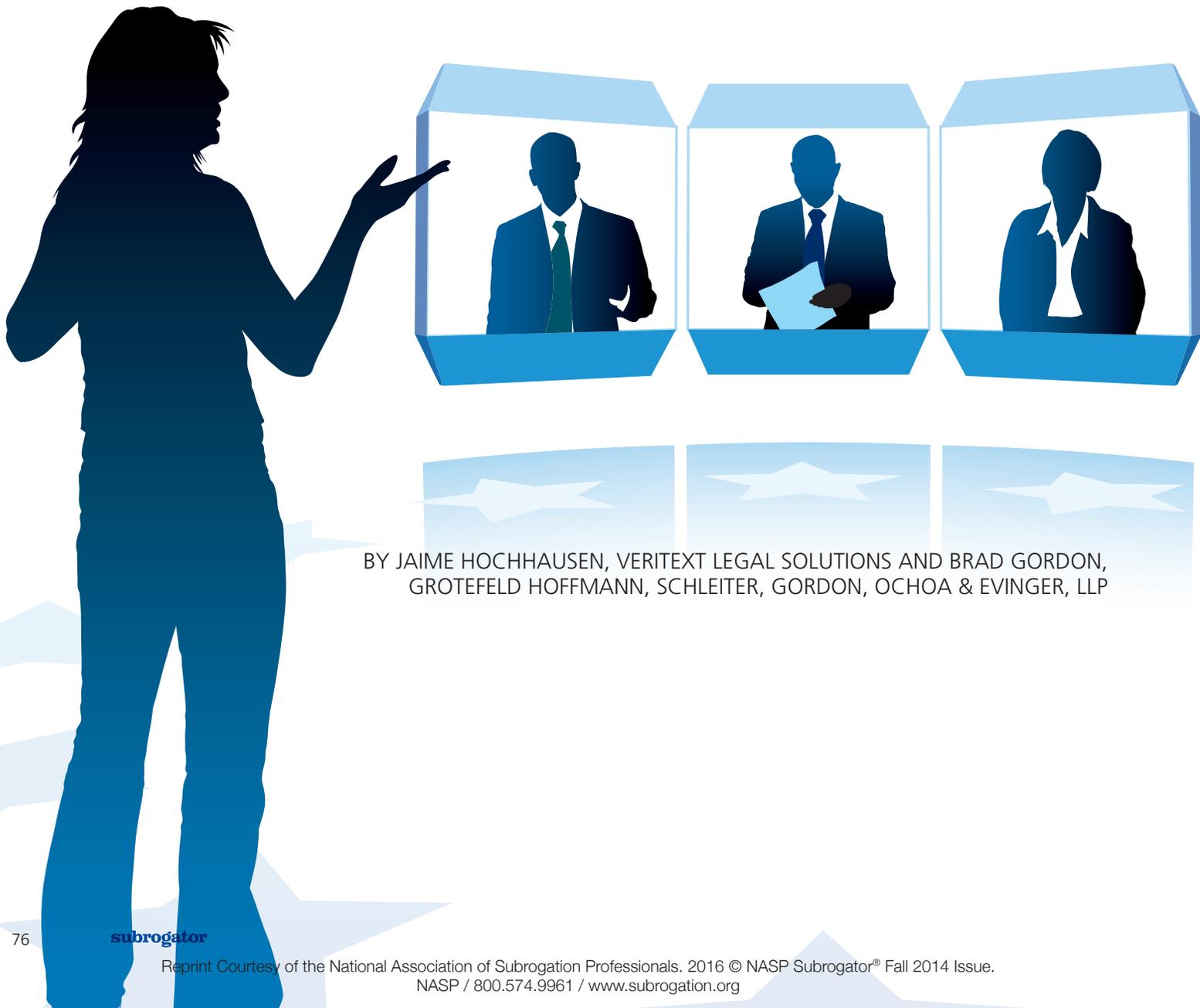


REMOTE VIDEO DEPOSITIONS

It's Almost Like You Are Right There



BY JAIME HOCHHAUSEN, VERITEXT LEGAL SOLUTIONS AND BRAD GORDON,
GROTEFELD HOFFMANN, SCHLEITER, GORDON, OCHOA & EVINGER, LLP

A VIRTUAL OR INTERNET-BASED PLATFORMS FOR TAKING DEPOSITIONS

In today's world of litigation, attorneys do not simply practice where their office is located. In fact, they are not even limited to the country in which their office sits. So how does one ensure appropriate representation of the client's interests while also realizing that one cannot be in multiple places at the same time? Remote virtual or internet depositions may be the answer. In today's world, people use video chat programs like Skype, FaceTime, Google Hangouts, and Facebook Video Calling to stay connected with friends and family who may live far away. Because of that increasing comfort with the use of technology, attorneys have begun to increase the use of remote depositions, utilizing professional internet-based deposition platforms such as Veritext Virtual. This article will provide various considerations that one must consider before recommending attendance at a deposition via a remote internet connection.

As the attorney considers whether it would be beneficial to schedule a remote deposition, the pros and cons must be weighed. Virtual or internet-based platforms make it relatively easy for the various witnesses and counsel to attend a deposition, especially when they are located in multiple locations. Many might ask, why spend extra money on a video deposition when a simple telephone deposition will do? Telephonic depositions have their drawbacks compared to video. In a telephonic deposition, the attendees obviously do not get to see the witness, causing them to miss out on the mannerisms that can be an indication of the truthfulness of the witness.

There is also the issue of speaking over each other when asking questions and objecting because it is sometimes difficult determining when a person is done speaking, especially if there are multiple attorneys in attendance. Additionally, when video is not used, counsel that is not present in the room cannot observe conduct by counsel or view the exhibits as they are used and marked. Once it becomes clear a telephone deposition is not the best course, the attorney should consider whether video is a prudent option. One of the major reasons to participate remotely is that it saves significant time and money for the client. All of the travel costs, including the airport parking or taxi, airfare, hotel and daily expenses are no longer incurred. Yes, there



are the costs incurred for the virtual or internet deposition service, but they are generally a fraction of the normally incurred travel costs. Moreover, it is simply not the monetary costs that are saved. Attending depositions remotely improves practice efficiency, minimizing an attorney's down time during travel and allowing the attorney to be more productive

Similarly, with the use of a virtual platform, an attorney may enjoy an increase in convenience. No longer is it necessary to locate facilities in multiple locations that have the same video equipment. Many of the new platforms offered by the various court reporting agencies allow participation by simply clicking a few buttons on your computer or even just clicking on a link. Furthermore, one of the major benefits of virtual depositions that often goes unrecognized is the ability to provide full capability electronic records and with some full-service litigation providers, you can obtain synchronized video transcripts with the transcription adjacent to the video feed on the same screen.

Lastly, it can be extremely difficult for multiple parties to identify consecutive available dates for depositions; completing a single deposition can take a number of days with travel and the deposition. The remote deposition platform minimizes the time required to a single date,

providing a greater opportunity to complete scheduling amongst multiple parties.

Things are not all positive with a remote attendance, however. First, technology is at the core of this option and as a result, a fully reliable network connection must be available. While "hotspots" and Wi-Fi are relatively stable, it is important to note that if the connection is lost for whatever reason, you are disconnected from your deposition until service is restored. Additional technological issues may also arise, such as malfunctioning microphones or video cards.

Not only is technology an issue, but the use of documents during the deposition becomes a more complicated process. Counsel may need to determine what exhibits will be used well in advance of the deposition. Those exhibits must then be provided to the court reporter that will be physically present with the deponent, and the attorney will then have to rely upon the court reporter to physically hand the documents to the witness. This procedure causes the attorney to lose some control of the documents and limits some of counsel's strategic options.

Many attorneys believe being physically present at a deposition and sitting across the table from a deponent provides control of the witness, including what documents

that witness sees and when. For instance, if a witness is acting coy and indicating they cannot locate a document, counsel has the ability to simply reach across the table and direct the witness's attention to a document. With video some of this control is lost. Similarly, when counsel is attending the deposition in person, marking of an exhibit by a witness is easily viewed. During a remote deposition, a short break is required while the court reporter must present the marked document to the remote parties by holding it close to the video camera for viewing.

After one considers the advantages and disadvantages of participating in a deposition remotely, we believe that with the existing technological options that many of the court reporting agencies have developed to assist in using documents remotely, you will come to agree that the future of scheduling and participating in remote depositions will continue to grow. Remote attendance using a web-based platform may never take the place of a face-to-face deposition for an important fact witness or expert, but it can be a part of your toolkit.

For instance, in addition to taking depositions remotely, counsel may also use these platforms for attending a deposition or allowing others, such as experts or co-counsel, to view from afar.

Virtual or internet-based platforms make it relatively easy for the various witnesses and counsel to attend a deposition, especially when they are located in multiple locations.



B

WHAT TO LOOK FOR IN A REMOTE DEPOSITION PLATFORM

There are several things to look for when choosing a remote deposition platform. The top three we find the most useful are: the ability to upload and share documents during the deposition; the ability to have the real-time transcript streamed; and a chat capability for speaking to the group or privately with another attorney or expert. Many attorneys may feel public video chat programs are an acceptable method for conducting remote depositions, especially in light of the cost efficiencies. However, there are concerns with their use. The capabilities are much more limited and the professional platforms have increased security measures for the deposition setting, making lawyers much more comfortable using the internet as an option. Additionally, the public access platforms generally do not contain the ability to upload documents, or real-time transcription.

1. Sharing Documents During Your Remote Deposition

The first thing that is an absolute must have is the ability to share your documents during the deposition. In addition to the ability to see and even question the witness remotely, you should seek a platform that allows you to share documents, make annotations, and attach documents as exhibits to the transcript. Another helpful feature is the ability to preload exhibits and share documents on the



fly. Other useful features include the ability to draw, highlight or digitally stamp specific areas of the document and even delegate control of the annotation tool to your witness or other participants. This allows you to avoid sending paper copies overnight to the remote location or emailing documents to the court reporter ahead of time. Remote document sharing also allows you to maintain control of the documents you will introduce on the record until you are ready to make them public.

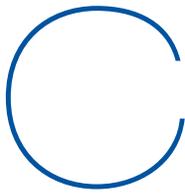
2. Real-time Transcript Streaming with Annotation Features

Another valuable tool feature you might want to look for is having real-time transcript streaming. With real-time transcript streaming, participants can receive a live feed of the transcript directly from the court reporter. This gives the attorneys the ability to search for keywords, highlight text, bookmark important pieces of

testimony and even apply issue codes to testimony in real-time. A rough draft of the transcript can be saved with or without annotations at any time. Real-time transcript streaming can be displayed and annotated simultaneously with video and remote exhibit presentation giving users a complete remote deposition experience in one browser window.

3. Chat with Other Participants

Finally, the chat functionality incorporated into the virtual conference room allows participants to hold private side conversations with other participants or publicly with all attendees. This can be a much more effective way to communicate with other remote participants than sending emails or text messages back and forth while on the record. It is important to know the difference between public and private chat so this feature can be tested with the tech team before using it the first time.



WHAT TO EXPECT OF YOUR REMOTE DEPOSITION

Using an internet-based platform to take, defend or attend a deposition is usually pretty easy. If the deposition is in the U.S., the witness and court reporter will be at the deposition site along with any other attorneys or participants that will be in attendance. A laptop with a webcam (internal or external) and an Internet connection is required to transmit the video feed. Many programs simply provide a link to the secure virtual conference room and log in credentials via email before the deposition. Attorneys can also add a conference call component to provide the highest quality of audio transmission.

Questions may exist as to whether remote depositions are directly approved by Statute. In many situations, they are, such as California Code of Civil Procedure §2025(h)(3) (3) A person may take, and any person other than the deponent may attend, a deposition by telephone or other remote electronic means. The court may expressly provide that a nonparty deponent may appear at his or her deposition by telephone if it finds there is good cause and no prejudice to any party. A party deponent must appear at his or her deposition in person and be in the presence of the deposition officer. The procedures to implement this section shall be established by court order in the specific action proceeding or by

the California Rules of Court.

However, much like the Federal Rules of Civil Procedure, other states still require stipulation or court order. See F.R.C.P 30(b)(4)(The parties may stipulate- or the court may on motion order- that a deposition be taken by telephone or other remote means.)

Remote access platform tools can be very useful for non-U.S. based witnesses to not only save on travel costs, but also to solve a problem that often arises – lack of court reporters abroad. Many times attorneys end up traveling, in addition to paying the cost of a court reporter to travel to the location of the deposition as well. This gets exceedingly costly and time consuming for everyone involved. In addition, many countries do not allow depositions. For those countries, and even the countries where depositions are allowed, counsel needs to research the procedural laws involved with deposing a witness who does not reside in the U.S.

Additionally, special measures must be taken to set up a remote

deposition. Often, opposing counsel will not agree to the deposition in a foreign country via remote video. For those situations, the attorney will need to go to the court that is hearing the case to request permission to depose the witness via a webcam and allow the reporter in the U.S. to swear the witness in remotely. Additionally, the attorneys will want to allow for some lead time to ship out a loaner laptop with a webcam should the witness not have one. While remote depositions are extremely popular and helpful in international cases, the attorneys must all plan ahead and be aware of the laws, extra steps and time that will need to be taken to schedule the deposition.

A screenshot of a login window. It features a close button (X) in the top right corner. Below it are two input fields: the first is labeled 'Username' with a person icon, and the second is labeled 'Password' with a lock icon. Below the password field is a checkbox labeled 'Remember me' which is checked. At the bottom center is a 'Login' button. At the very bottom, there is a link that says 'Don't have an account? Sign up!'.

D KEEPING YOUR REMOTE DEPOSITION I SECURE

Security is of utmost importance when conducting or attending a remote deposition. Utilizing a secure, reliable web-conferencing platform will ensure the proceedings will remain confidential. Unlike the free web-chat tools designed for personal use, products such as Veritext Virtual utilize a dedicated virtual conference room and single sign-on for each event. Security attacks in this arena typically involve an unauthorized user or “sniffing” or “eavesdropping” on user information while the data is in transit. We recommend a network that utilizes 128-bit SSL/TLS to create a more secure end-to-end connection and to encrypt all communications

between the server and all connected users. Not only is this connection secure, it is extremely user friendly. Users can access a remote session using only a web browser (PC or Mac) and are able to avoid complicated downloads and installations.

Security can also be breached by sharing of the video feed. Most remote platform systems require individuals to sign up for individual links. However, that does not prevent others from being present while watching the deposition. For instance, counsel should consider the ethical ramifications for allowing others not identified in the record to view the deposition. It may be prudent that if counsel is allowing

an expert or other witnesses to view the remote video deposition, it advise all counsel of this fact and receive approval. Furthermore, other “security” breaches could occur at the deponent’s location. If a full room camera is not used, counsel attending remotely may not observe potential “coaching” by those in the deponent’s room or the providing of documents to assist the witness. Certainly these are also ethical considerations for each attorney to consider, in addition to a potential “breach of security”.

Although videoconferencing and video streaming have been around for years, the technologies were typically not available except to those with deep pockets and a tolerance for technical complexity. However, over the past few years an increase in technological acceptance, lower costs, and greater security has rapidly driven the adoption of these technologies as viable alternatives to travel.

*Complete Subrogation Services
Throughout California
Since 1994*

Ring & Green

Attorneys At Law

*“The Gold Standard
In The Golden State”*

(310) 226-2550
ringgreen.com



Fire & Explosion Consultants, LLC



Fire & Explosion Consultants, LLC is a privately owned and operated investigation company providing origin and cause investigation services for commercial and residential fire and explosion losses. Our experience in fire, arson, and explosion investigations far exceeds the standards set forth by the National Fire Protection Association (NFPA).

At FEC our highly trained IAAI-Certified Fire Investigators address each loss with professional documentation that includes photographing, diagramming, interviewing, collection of artifacts, so that a thorough examination of the loss is recorded.

**Premier
Fire & Explosion
Investigators**

For an expert examination call (937) 237-4000
www.fec-fire.com
Scott Bennett, IAAI-CFI, CFEI, CFII ~ Jim Hunter, IAAI-CFI, CFEI, CVFI
7490 Bridgewater Road Huber Heights, OH 45424