

The Masked Courtroom (05/27/20)

Well, it finally happened! I found myself in court in Lycoming County, Pennsylvania, the great city of Williamsport, home of Little League Baseball, in a live courtroom filled with masked participants. Not everyone was in the courtroom. The defendant alleged abuser in a Protection From Abuse Act case was in prison. We could only see the top part of his head, his mask hanging down, basically off his face. Everyone in the courtroom, however, wore masks from the Judge, the Clerk, the Secretary, the Court Reporter, and of course, all the participants. The police officer sitting behind me who had been subpoenaed either did not have a mask or was not wearing it. Cops are tough and they do not need masks.

Imagine *Perry Mason* with masks. Anybody remember *Perry Mason*? Usually, I talk with the defendant first to see if we can reach some agreement on a Protection From Abuse Order, whereby both sides would determine not to harass one another and there would be no finding of abuse. It was difficult to talk to the defendant since he could hear us but we could not hear him. We developed a system of sign language. I asked him to put his thumb up if he agreed with me, and thumb down if he disagreed. He made it clear he did not want to agree to the Abuse Order. He denied the abuse. He claimed that my client was simply trying to manipulate the system for some economic or control reason. She began crying, head in hand, and denied that she was anything less than perfectly truthful.

The Judge appeared, masked and robed. Judge Tira was engaged, efficient and fair. The whole proceeding was a bit of a mess. However, the Judge kept things under control, notwithstanding that it was difficult to hear the defendant even after the court was able to get him on a telephone line. We were watching him on the big screen while talking with him on the telephone.

During the course of the proceeding, the defendant changed his story from denying the claimed attempted throat-slitting to agreeing to the mutual order without findings of abuse. Both plaintiff and defendant cried, albeit remotely and while masked. All is well that ended well. Imagine the poor Court Reporter trying to understand the crying and interruptions, all while everyone was masked!

As I walked back musing about my courthouse experience, I thought about other unique and unusual situations I have faced in my long and very happy career. I remember the first time that I was in a courtroom with everyone bearded. It was the late and very Honorable Thomas Raup. He always looked to me a little bit like Abraham Lincoln with his graying beard. I looked like a young Yeshiva student from Crown Heights, and opposing counsel was a rotund bearded lawyer from the Department of Transportation in Harrisburg. It was an extremely professional proceeding. Oh, what about the Court Reporter? I do not think she had a beard.

The other unique proceeding easily recalled is the first time that every participant in the courtroom was female except for me. The three-judge Superior Court Panel were all

women, the staff and reporters were women, my opponent was a woman, and there was me. The result was not necessarily to my favor, but that had more to do with the weakness of my case than the gender of the participants.

Other firsts were times when the participants, some of them at least, did not speak English or at least pretended they did not speak English. There was the case of the Japanese engineer in the Honda litigation who absolutely insisted on a translator. It was obvious from the questioning that he understood English better than the translator. We knew that from his frequently answering the question differently than the translator phrased it. The witness was easily unmasked. (Get it?!)

Courtrooms have evolved, but not as dramatically as one might think. It was a long time ago that we started trying paperless trials. When I first did that, I was treated as though I had just newly arrived from Mars. In those days we had to file motions asking for permission to present evidence via computer on a large screen. Now, that is the *lingua franca* of the legal system. Judges and lawyers expect cases to be presented paperless utilizing PowerPoint, animations, and other clever methods of presentation. In many courtrooms, every juror has an iPad or a computer screen right where they sit, as well as the judges and the staff and the lawyers. Many lawyers can run these evidentiary presentations themselves, without having staff available to help them. Some courthouses now have the availability of the internet. We have taken depositions and statements in courthouses where the witnesses were in Moscow and California. Incidentally, the technology worked better with the witness in Moscow than L.A.

The basic premise of hearing witnesses live and determining their credibility has certainly taken a hit during the recent COVID-19 pandemic scare. Most courts have essentially shut down. A lot is being done on Zoom. The young lawyers in my office have no fear of depositions by Zoom or other electronic means. We old timers are concerned about the texture, the feel, the ability to examine and cross-examine a witness utilizing what has been called “the greatest engine for the ascertainment of truth ever devised”. On the other hand, the defendant in the PFA certainly changed his tune during his examination by video.

No doubt, the law will return to its former robust self. We will all find ourselves back in the courtroom, although perhaps a bit more careful, with disinfectant on counsel tables, masks available, and social distance at...well, a distance.

The law is alive and well, and it will adjust to the new reality of pandemics and disruptions just as it has since the days of the Sanhedrin. All the best to everyone for safe, healthy and happy courtroom experiences!

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