

The Virtual Civil Trial

Thunder Bay Law Association
Annual CLE Program
October 27, 2021

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MARTIN & HILLYER
ASSOCIATES

RESOURCES

- Ontario Superior Court of Justice – At-A-Glance Guide to Virtual Hearings
<https://www.ontariocourts.ca/scj/notices-and-orders-covid-19/guide-to-virtual-hearings/>
- Document Naming & Filing Protocols
- Preparing for Virtual Hearing
- Etiquette, civility, and cooperation in Virtual Hearings
- Preparing witnesses for Virtual Trial
- Zoom Hearings – how to object; sharing screen; using multiple monitors; lighting etc.

Below is a sample virtual hearing protocol. Please consult with the other parties and modify it for your hearing, as needed.

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

Plaintiffs

and

Defendants

VIRTUAL HEARING PROTOCOL

[Sample only – modify for your case, as needed]

TECHNOLOGY FOR THE TRIAL

1. This trial will proceed virtually using the Zoom platform.
 2. No party nor witness shall record video or other images of the proceeding.
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OVERVIEW

- 8-week virtual trial – October 13 to December 2, 2020
- P.I. case – Incident with horse causing facial fractures and eye injury
- Hamilton action
- Justice Nightingale – Simcoe Chambers
- Court staff worked from home in Hamilton
- Defence rented two hotel rooms in Oakville
- We used our boardroom as our “courtroom”

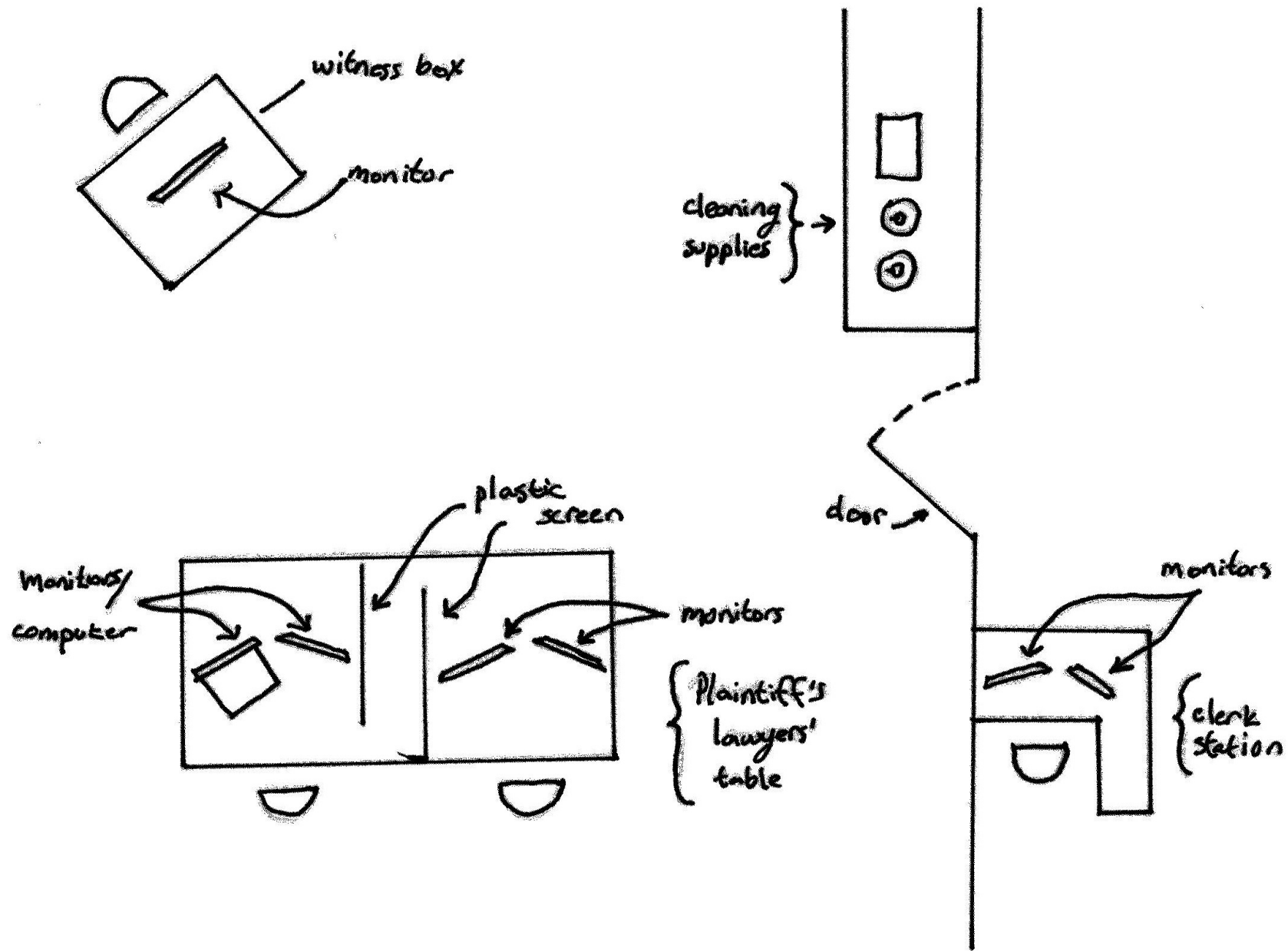
SO, WHERE'S THE COURTROOM?

- All witnesses testified via Zoom
 - Lay witnesses from England and Wales
 - Government official from MTO testified from Toronto
 - Various medical professionals testified too – treating and rule 53 experts
 - Plastic Surgeon
 - Ophthalmologist
 - Optometrist
- Some witnesses came to our boardroom
- Some witnesses testified at location convenient to them



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TECHNOLOGY

- Can be done on a large scale or a smaller scale – don't need to break the bank!
- How the person is seen and heard on the screen is what matters – they need to look at the screen.
- Dual headphone headsets with microphones
- HD cameras are recommended
- Ring Lights should be considered

PRE-TRIAL MEETINGS WITH JUDGE

- 3 pre-trial meetings with judge
- Discussed
 - Location of courtrooms (PL, DF, Judge, court staff)
 - Location of witnesses
 - Dress code
 - How openings to be done
 - Filing of documents
 - Document management systems
 - How business records were to be used (joint statement)
- Request meeting from trial coordinator if one not give to you

FORMATTING OF DOCUMENTS

- **Joint document briefs in PDF**
 - Business records
 - Non-business records
 - Tabbed just like AOD in typical case
- **Planned exhibits in PDF**
- **Justice Nightingale wanted paper copies for his review**
 - Couriered Joint Brief to Judge's chambers in Simcoe
 - Joint Briefs to Hamilton courthouse too (for filing)
 - Because they were going to be exhibits (more on filing later)

OUR INTERNAL DOCUMENT MANAGEMENT

- **All our documents were on SharePoint**
 - PDFs – Joint Document Briefs, planned Exhibits
 - Word documents – Openings, closings, direct, cross, case summary, case theory, etc.
- **Benefits of SharePoint**
 - Accessible online anywhere
 - All documents accessed by everyone at same time
 - Changes are almost instantaneous
 - Changes can be made to anyone at any time and seen by everyone

HAVING A BACK-UP PLAN

- **Home-Office**
 - If must self-isolate
 - Share-Point makes this easy
 - Double screen, headset, camera, etc.
- **Allows you to avoid jeopardizing the hearing of your case**

OPENINGS / CLOSINGS

- Verbal, sitting down
- Also sent to Judge in writing at Judge's request – not b/c of virtual setting
- Consider asking Judge if he/she wants copy of opening?
- If you want to stand, stand!

WITNESS PREP

General Comments

- Make sure witnesses familiar with Zoom – meet with them over Zoom
- Practise using exhibits
 - If you share your screen, witness cannot mark document
 - In some circumstances, best for witness to have control of exhibit
- Read the Ontario Superior Court of Justice – At-A-Glance Guide to Virtual Hearings
- Dress appropriately...still a courtroom
- Convenient
 - Busy witnesses (e.g. treating or litigation expert does not have to leave office)
 - Witnesses out of town, etc.

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

Plaintiffs

and

Defendants

INFORMATION FOR WITNESSES

THE VIRTUAL TRIAL

1. You are going to be a witness in a trial that will be conducted virtually over the Internet.
This document is intended to help you understand your role and responsibilities as a witness. Please read the document carefully.

YOUR OBLIGATIONS AS A WITNESS

2. Your obligation as a witness is to be truthful with the Court. Although you might be sitting
-

WITNESS PREP

New Direction from SCJ

- Information for Witnesses:
 - Obligations (to be truthful, same as if sitting in Court, serious/solemn)
 - Can't discuss the case during cross-examination
 - Rules while testifying (camera and microphone on, access to documents, can't use a 'script')
 - Best Practices for Testifying Virtually – hardware, environment around computer, bandwidth concerns
- Swearing or affirming
 - They must have Holy Book with them

WITNESS TRIAL TESTIMONY

Examination of the Witness

- Similar to physical courtroom experience
- Still has drama
- Stand if you want to stand
- Do we need in person testimony????

Objections

- Witnesses may be placed in virtual waiting room
- Witnesses physically present may just have to leave room

WITNESS TRIAL TESTIMONY

Objections

Ontario Superior Court of Justice – At-A-Glance Guide to Virtual Hearings

Sample Virtual Hearing Protocol – page 9

OBJECTIONS

26. Where counsel objects to a question being asked of a witness, the objecting counsel shall indicate such objection by physically raising their hand and/or verbalizing the objection.

FILING EXHIBITS

- Joint Documents Brief filed in paper at Hamilton (but internally we used pdf copies)
 - CaseLines has changed this, but process is the same
- Other documentary exhibits
 - PDF during trial → emailed to court clerk same day
 - Paper copy filed at Hamilton courthouse (courier/process server)
- Real evidence
 - Kept in our “courtroom” at office
 - Filed at the end of trial → Hamilton courthouse

USING DOCUMENTARY EXHIBITS

Who has control?

- Figure this out first
 - Counsel?
 - Co-Counsel?
 - Witness?
- Practise!
- Consider using the Spotlight function in Zoom. (Like a laser-pointer)
- If marking up a document, use mark-up features in Adobe or, if using Zoom, take a screen shot

DEMONSTRATION

Martin & Hillyer Associates - Google Maps.pdf - Adobe Acrobat

File Edit View Window Help

Create

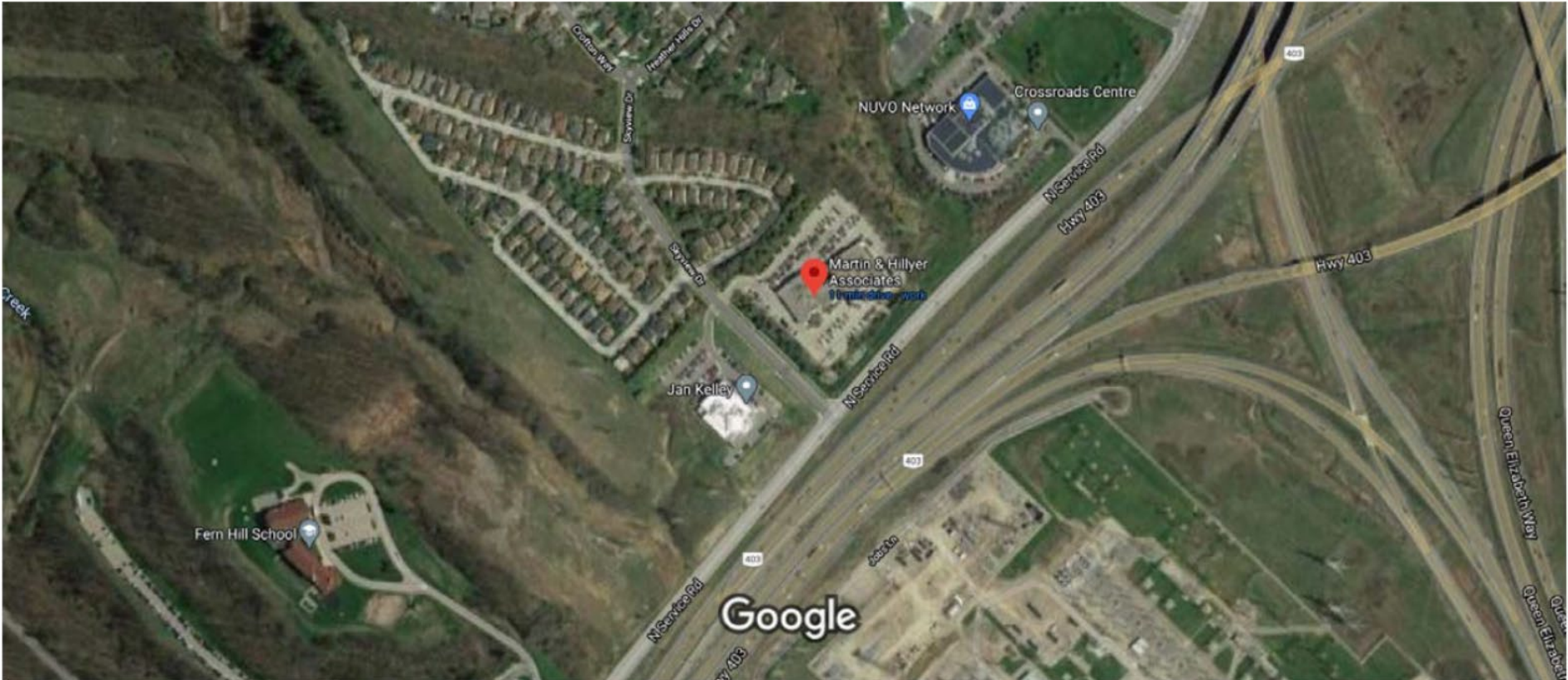
Mute Stop Video Security Participants 2 New Share Pause Share Annotate Remote Control More

You are screen sharing Stop Share

Tools Comment Share

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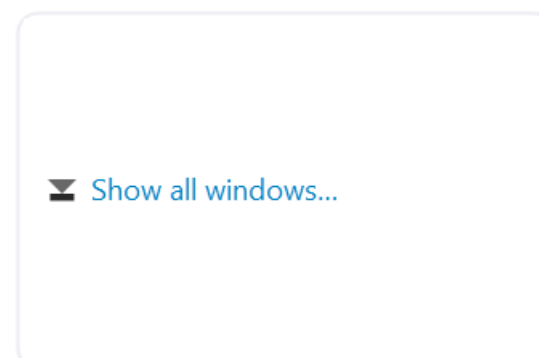
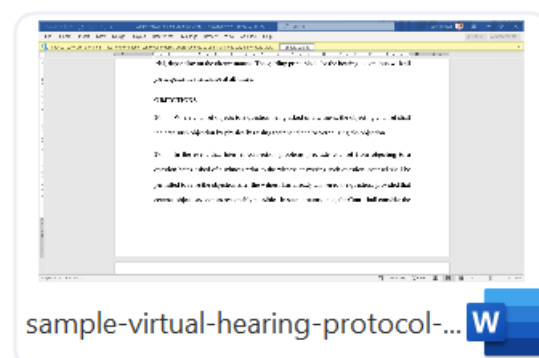
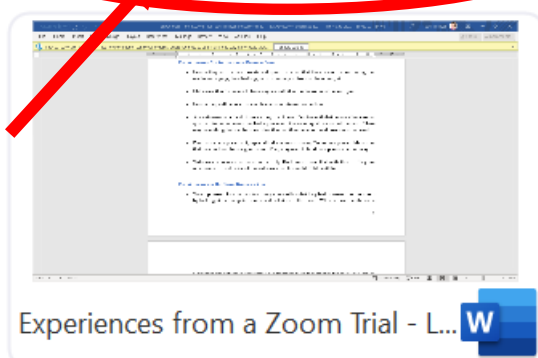
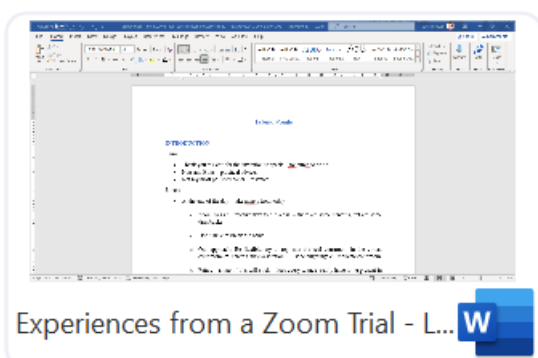
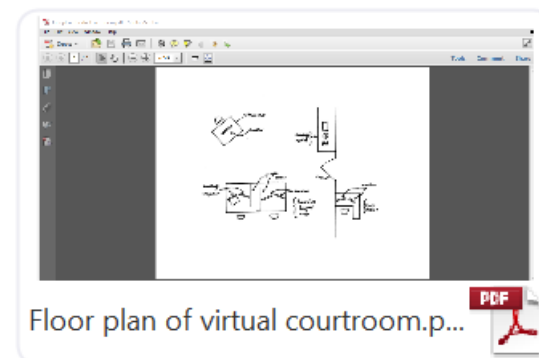
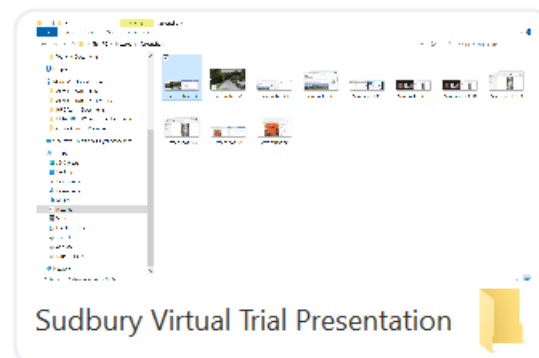
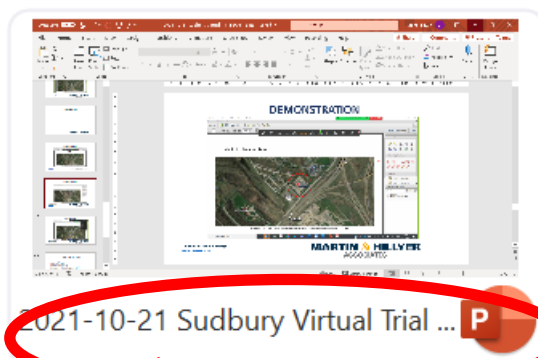
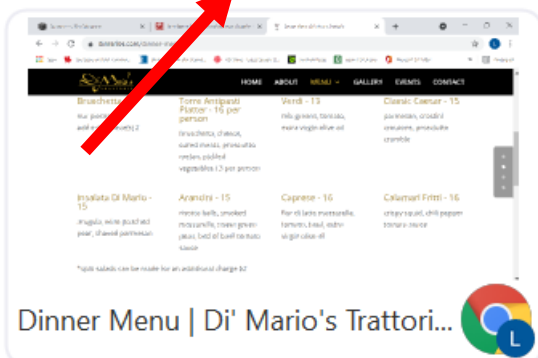
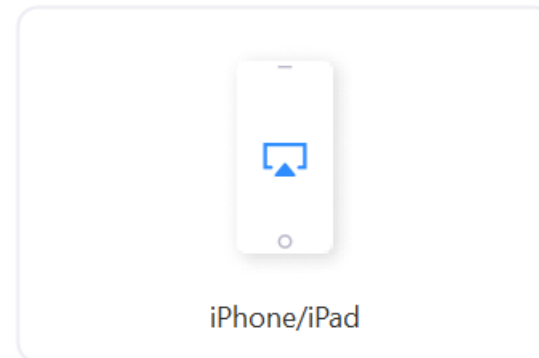
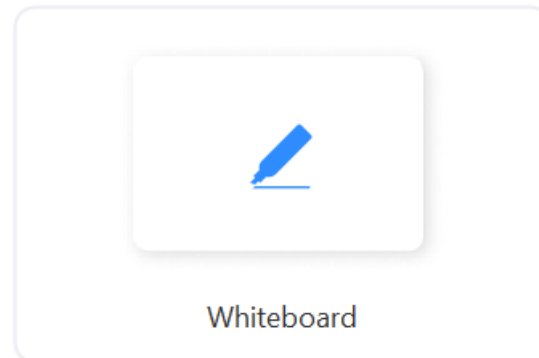
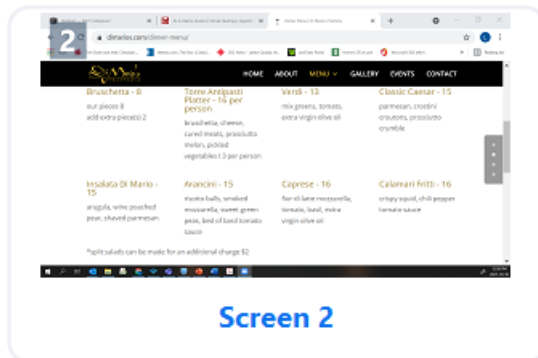
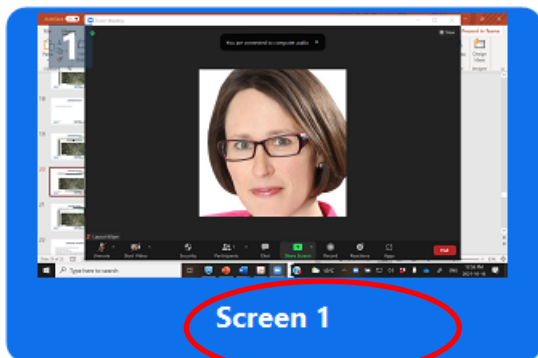
The satellite map shows the location of Martin & Hillyer Associates, marked with a red pin. The map includes labels for various streets such as N Service Rd, Hwy 403, and Queen Elizabeth Way. Other landmarks visible include Fern Hill School, Jan Kellay, NUVU Network, and Crossroads Centre. The Google logo is visible at the bottom of the map.

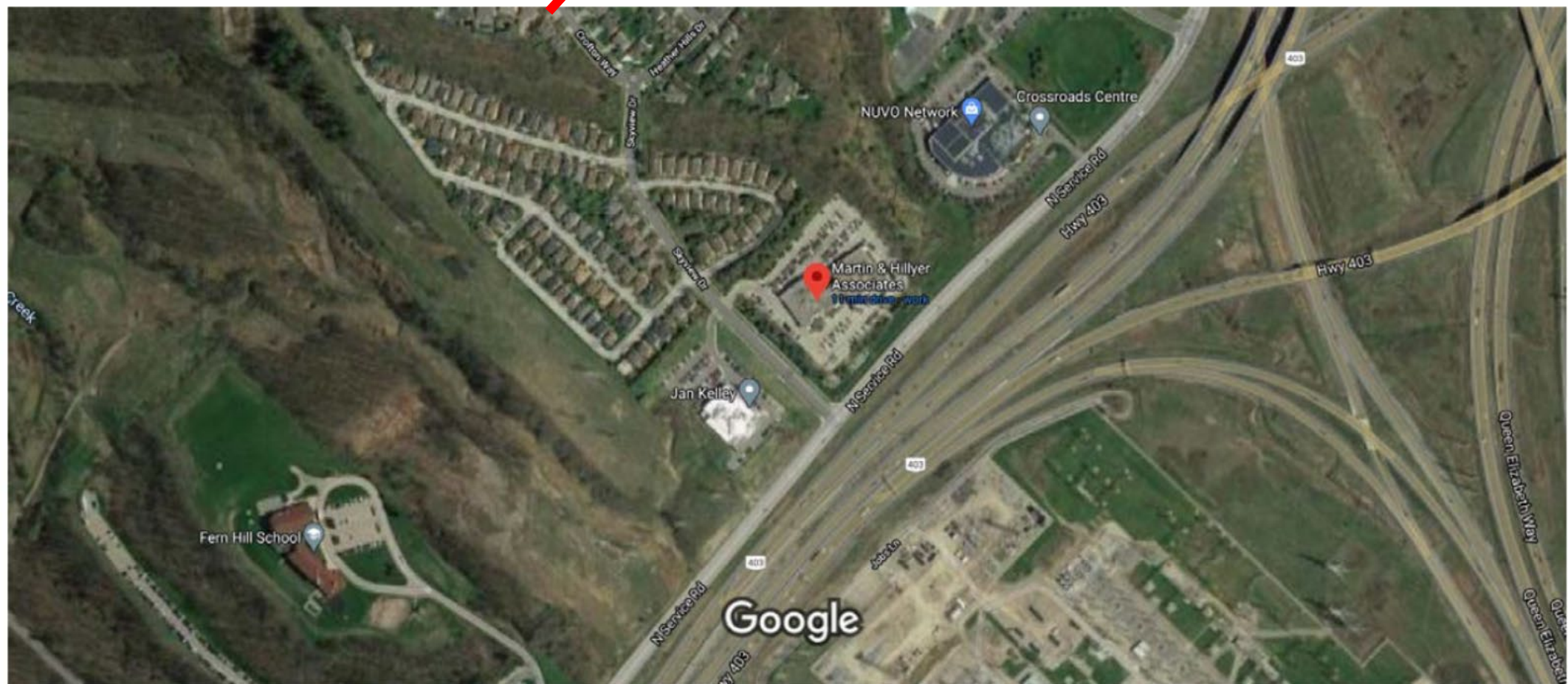
Windows taskbar: Type here to search, 2:11 PM, 2021-04-12

Basic

Advanced

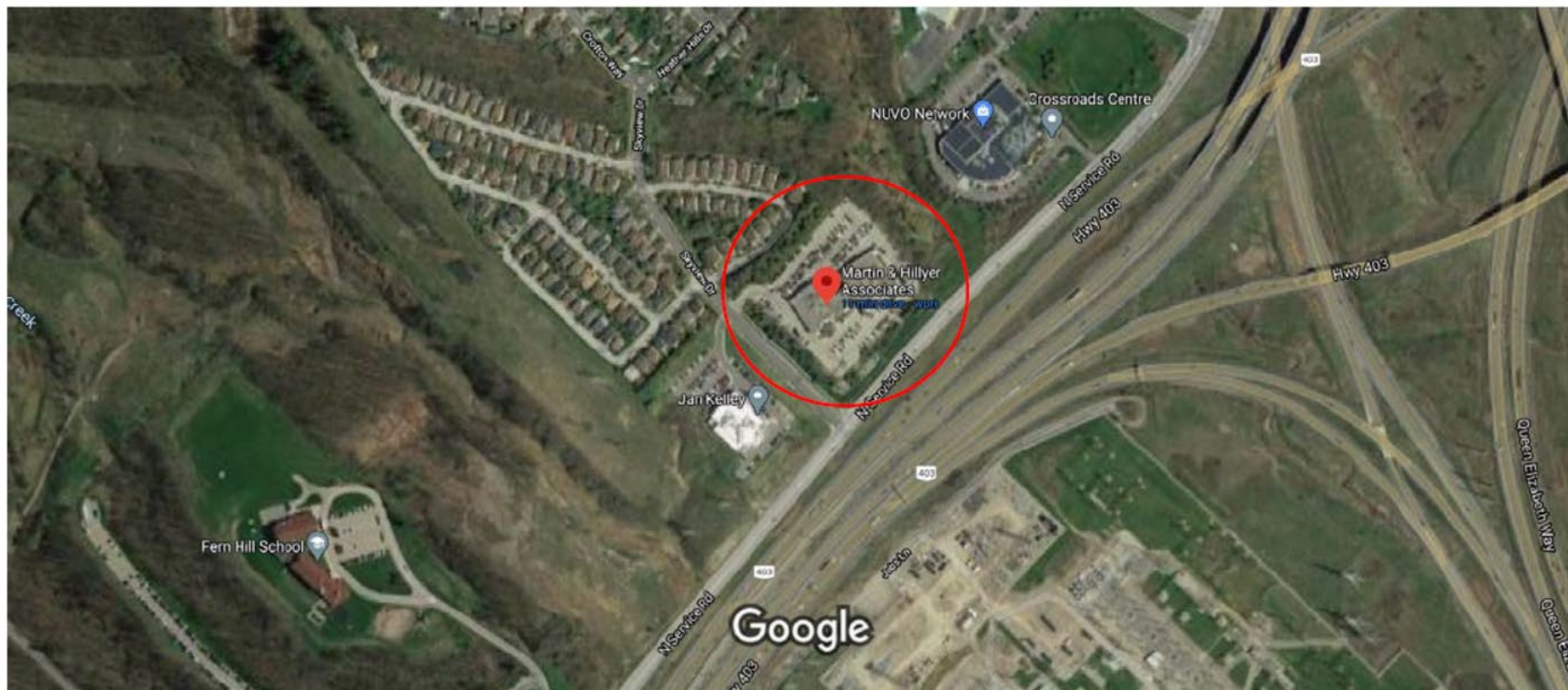
Files







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Imagery ©2021 CNES / Airbus, First Base Solutions, Maxar Technologies, Map data ©2021

100 m

Annotations



Drawing Markups



Review

- Send for Shared Review
- Send for Email Review

Comments List (1)

Find

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Page 1 2021-04-12 2:31:14 PM

PLAYING VIDEOS

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File Edit View Window Help

Create

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Google

Mute Stop Video Security Participants 2 New Share Pause Share Annotate Remote Control More

You are screen sharing

- Chat Alt+H
- Reactions
- Record on this Computer Alt+R
- Record to the Cloud Alt+C
- Meeting Info
- Disable Annotation for Others
- Hide Names of Annotators
- Hide Video Panel
- Hide Floating Meeting Controls Ctrl+Alt+Shift+H
- Share sound
- Optimize for video clip
- End Alt+Q

Type here to search

2:16 PM 2021-04-12

USING REAL EVIDENCE

- Witness stood up off to side with real evidence
- Took HD camera off screen
- Show, identify, and demonstrate
- Real Evidence – take photo and have witness identify both the real evidence and confirm that the photo is an accurate depiction. File both.
- **Problems**
 - Witness needs to be where you are
 - One party has real evidence and other needs to use it
 - Mirroring the camera

MIRRORING THE CAMERA

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File Edit View Window Help

Create

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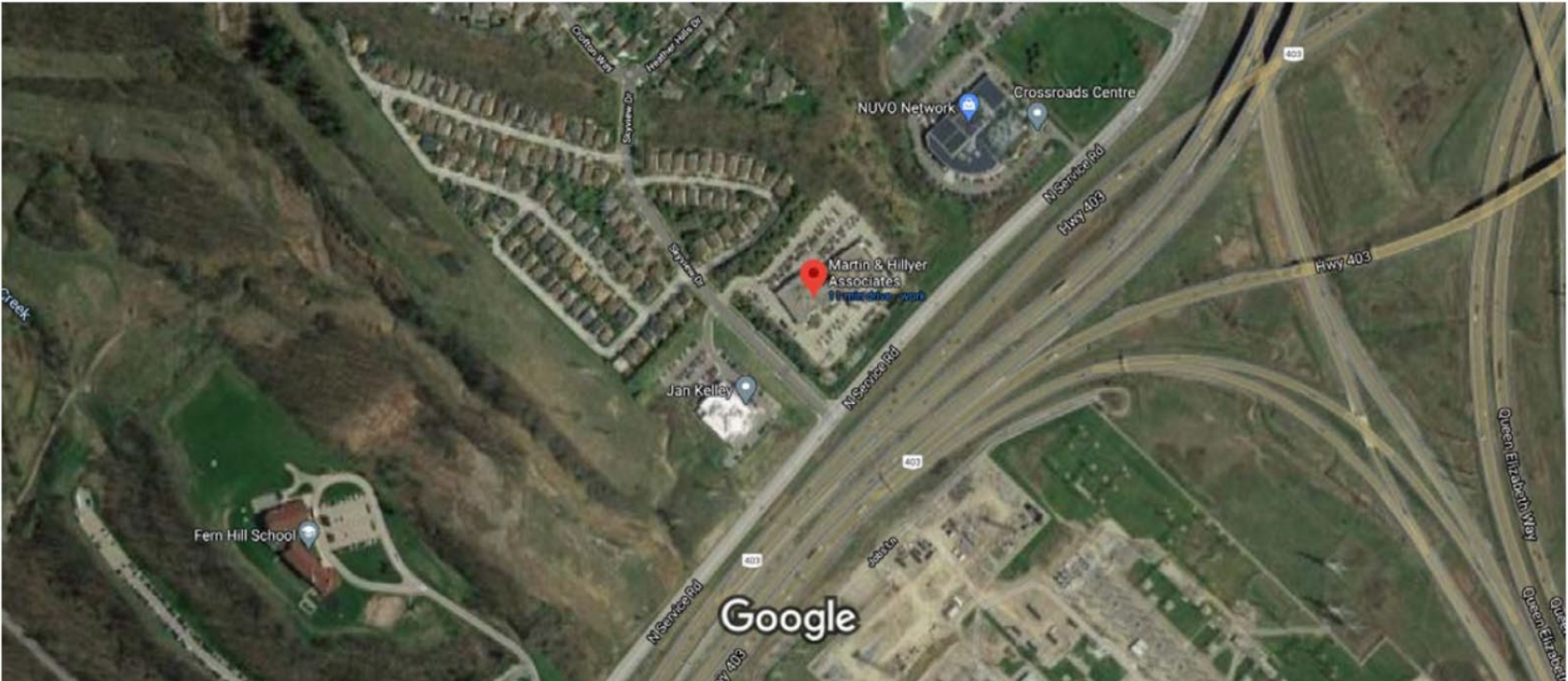
Select a Camera (Alt+N to switch)

- HP Full-HD Camera
- HP HD Webcam [Fixed]
- ✓ USB Live camera
- Choose Virtual Background...
- Choose Video Filter...
- Video Settings...

New Share Pause Share Annotate Remote Control More

Sharing Stop Share

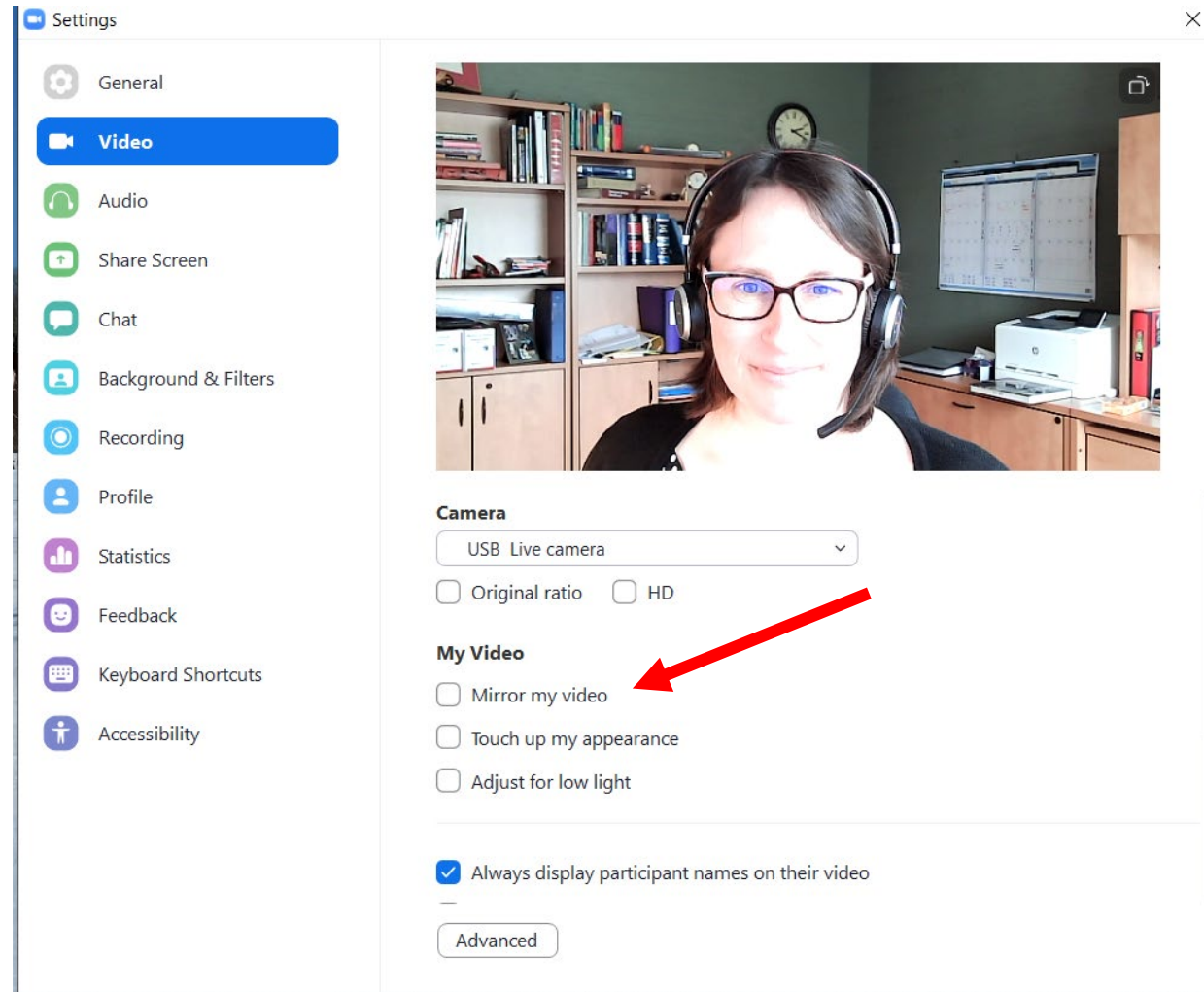
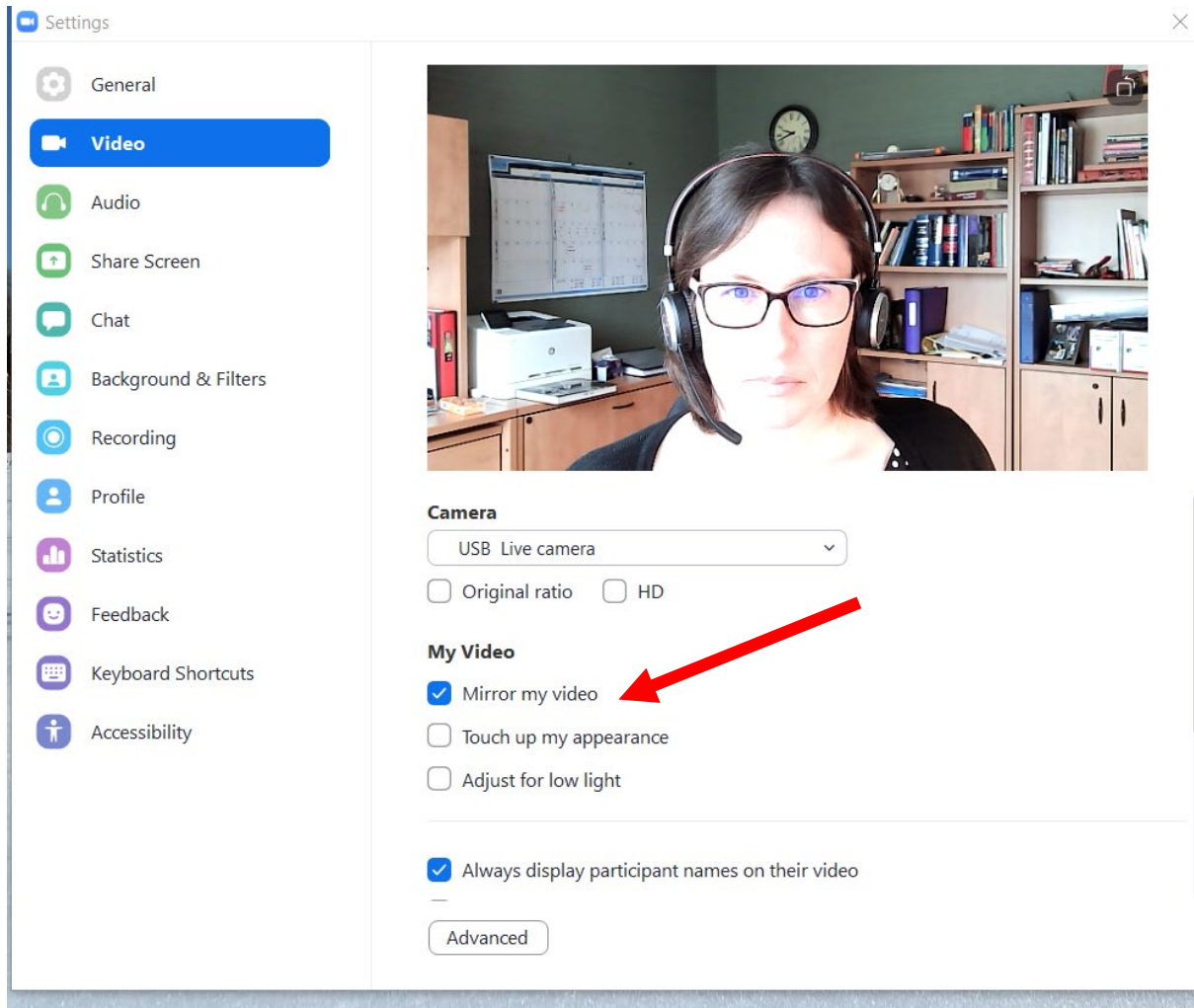
Tools Comment Share



Google

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MIRRORING THE CAMERA



CONCLUDING THOUGHTS

- Virtual trials are manageable!
- Don't be intimidated by the technology or the different format. We learned as we went.
- Post-pandemic trials will likely retain some aspects of virtual hearings (eg. out of town witnesses) so embrace the future!
- Read the SCJ's Guide.