TECHNOLOGY AND DEMONSTRATIVE EVIDENCE
Paralegal Division Program

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Friday, June 11, 2010
1:30 p.m. – 2:30 p.m.
Wendi – a trial paralegal with over twenty years’ experience – graduated cum laude from the University of North Texas with a degree in Legal Information Management. She also carries both the ‘Certified Paralegal’ distinction from the National Association of Legal Assistants as well as Board Certification in Personal Injury Trial Law from the Texas Board of Legal Specialization. Wendi is an active member and/or officer in several state and national paralegal organizations and travels throughout Texas speaking on litigation-related topics for paralegals.

Wendi’s outstanding skill as a paralegal and her extensive experience with digital media and trial presentation make her an invaluable member of our team.

**Wendi Rogers, CP**
Senior Paralegal

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**Admissions, Memberships, Awards & Professional Activities**

Ambassador, Director & Past-President
Paralegal Division of the State Bar of Texas

Member, former Director & Committee Chair
Dallas Area Paralegal Association

Member, former Committee Chair
National Federation of Paralegal Associations

Speaker, Collin County Bench/Bar Conference (2009)

Paralegal of the Year (1993)
Association of Trial Lawyers of America (nka American Association for Justice)

Paralegal of the Year (1998)
Dallas Area Paralegal Association

National Federation of Paralegal Associations

**Education**

B.A.A.S., University of North Texas (2001)

**Personal Activities**

Married, two children

Wendi and her husband raise and breed Texas Longhorn cattle on their ranch in Grayson County.

She and her husband are members of Grace Community Church in Plano, Texas where they serve as small group leaders.

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This paper discusses areas of consideration when addressing your case’s demonstrative evidence needs. These considerations were divided into three categories and I used a favorite childhood game to show the differences in each.

While this paper references Demonstrative “Evidence” you should keep in mind that technically not all Demonstratives are “Evidence”. Some Demonstratives are aids for the jury and are not admitted into evidence.

**The Rock:**

We are going to think three-dimensionally and creatively about this type of demonstrative evidence. This type of evidence appeals to different senses and is often colorful, descriptive and organized. This type of evidence is also unconventional at times and is used to summarize or encapsulate these types of items:

- theories
- series of events
- processes
- concepts
- calculations
- feelings
- facts

Here are a few ways to demonstrate the above items:

- Graphs and charts
- Timelines
- Photos
- Diagrams
- Videos
- Illustrations
- Models
- Flow Charts
- Animations
- Audio
- Replicas
- Re-enactment
- Physical Demonstrations

While several of these items can be very expensive (i.e. animations, re-enactments and
replicas), they may provide the most effective method for communicating the issues in your case. For example, a complex truck accident or construction accident may require a re-enactment or animation to give the jury a visual of the occurrence and events. These elements of demonstration will also require that foundation be laid through a witness. Most animations, re-enactments, models, illustrations, graphs and charts are supported by the testimony of an expert and help to summarize the expert’s opinion in a more succinct and effective way. If you anticipate that your case is going to warrant these types of items, you might consider negotiating with the expert so that they incorporate the cost of such demonstrative aids within the fees they charge. Many times useful demonstratives are used by a particular expert in several cases as they have either handled similar cases or, as in the case of a doctor, they regularly treat the condition at issue.

Another way to keep the cost down is to network with other firms who have handled similar cases in the past and borrow their ideas for your case. Find out what worked and what didn’t and what they would try next time. See if you can borrow or rent any models or illustrations that would be useful to your experts in your case.

If your demonstration is going to require a particular type of equipment (i.e. video, audio, or projection), try renting it from a reliable source rather than buying it for the occasion. See if they will provide set up so that you can avoid last minute technical glitches. If the budget permits, it is always better to have a technician on site to run the equipment throughout the trial.

If budget is an issue and you can not afford to hire someone for graphics, you may use your own computer graphic skills to create timelines, summaries, graphs and photos. Most firms have computers that come pre-loaded with photo editing programs (i.e. Windows Image & Fax Viewer and Paintbrush), and presentation software. Both the Corel and Microsoft Suites have programs you can use. Corel Suite contains a Presentation Software Program and Paint Shop Pro for photo editing. The Microsoft Professional Suite contains PowerPoint and Publisher. These programs provide the most economical way to produce Demonstrative Evidence but can also be the most time intensive – especially if you are not familiar with the software. There are other programs that are helpful for editing photos and documents such as Photoshop and Photoshop Elements.

The Paper:

These demonstratives are associated with evidence that are in document form. Marking up documents helps to pinpoint and highlight the specific areas of interest within your exhibits without changing the authenticity of the actual exhibit.

In marking up your documents you will want to “call out” (or blow out) specific references and highlight sections of interest. Use the highlighting sparingly to avoid confusion for the trier of fact. The goal is to summarize only the very key issues on a page. These “call outs” can be pre-built using one of the previously mentioned software programs or can be done on the fly in the courtroom.

The easiest and most efficient way to “call out” and highlight a document either pre-built
or on the fly, is through Trial Presentation Software. The best options for Trial Presentation Software ("TPS") are Sanction (www.verdictsystems.com) and Trial Director (www.indatacorp.com). Both of these programs allow you to manipulate your documents in various ways and save the markups if desired. You will also need to make other considerations if you choose to go digital with your evidence. Please see the accompanying document titled: Considerations for Presenting a Multi-Media Presentation.

Here are some more economical ways to present your documents:

- If you want to go digital but do not want to invest the time or money in TPS, you can use:
  - Presentation/Slide show Software as discussed above. These are linear slide shows so you will need to either present in a pre-determined order or become very familiar with the order and organization of your slides;
  - Use a photo viewing program like Windows Image and Fax Viewer or Microsoft Office Picture Manager. Both are more cumbersome than TPS but will allow you the ability to blow up and highlight portions of a document. Again, you’ll need to be very familiar with your documents’ file location and you’ll need to be organized in your file naming scheme. You will also want to consider using a dual monitor so that you can access items outside the view of the trier of fact.

Another economical option is the foam core blow-up. You will want to be very selective about which items are blown up as they are difficult to maneuver and having too many can cause disruption in the courtroom. My personal opinion is that more than 5 is too much. Only use this technique for key documents. You may also want to choose this option if you have an X-ray or other radiological film that is critical to your case. The benefit of the foam core blow up is that you can possibly mark them as exhibits and present them to the jury during their deliberation. The court will usually allow this if they were previously admitted through another exhibit.

**The Scissors:**

This type of Demonstrative Evidence consists of video editing. I put this under the “Scissors” section because it reminds me of the old days of film work when the cuts were “left on the editing room floor.”

Luckily, our cuts these days are done digitally making the editing process much easier and we no longer have the numerous versions on numerous video tapes. It also allows for convenience when the court makes a last minute ruling requiring the last minute editing of a video deposition.

The easiest and most efficient way to edit a video deposition is through TPS. Through TPS, the video and deposition transcript are synchronized allowing you to search the written transcript and jump automatically to the relevant section of the digital video. It makes it simple to pull video testimony on the fly.
You are still able to edit digitized video without a TPS program. You may use a linear video editing program. It takes longer than a TPS program because you have to cycle through the entire video and manipulate the video back and forth until you have the cuts clean and accurate but it works. Most of the newer computers come pre-loaded with a video editing program like Windows Movie Maker. Apple computers have their own version of video editing and I’m told that they are very easy to use. Windows Movie Maker is not the most user friendly program that I’ve used but it works. Other video editing programs include Pinnacle, Ulead and Sony Vegas (my personal favorite).

Video editing programs allow you to edit most types of computer formatted video. They will capture video from a digital camcorder and load it into your system in a usable format. They will also allow you to add photos and documents to videos. This is quite handy when you want to a slide show type presentation and add your own titles, music or narration.

Of course nothing I’ve written in this paper will have the impact that a visual presentation will have. That is why this paper is merely a supplement to the visual demonstration of these techniques. Just as it is in the courtroom, anything that is said through speech alone is not as effective as seeing and experiencing the information.

The keys to successful demonstratives are:

* Advanced Preparation
  1. Plan equipment
  2. Plan your layouts
  3. If you do not have a technician to do the work for you, have the work done as far in advance as possible. That way you can focus on your case the last few days before trial and make only incremental changes to your presentations.

* Rehearsal and Practice
  1. Make sure others see it the way you see it.
  2. Make sure all of the colors and pictures come through clearly.
  3. Make sure you know how to run it and that it all runs. (when using the computer)

* Simplification
  1. Don’t use a lot of fancy colors, fonts and clip art. That will only take away from the evidence.
  2. Make sure you only hit the key issues or facts. Giving too much information may confuse what is really important.
  3. Keep the process simple for your abilities and do not bite off more than you can chew with the technology. More is not better if you can’t get yourself out of a technical glitch.
CONSIDERATIONS FOR PRESENTING A MULTI-MEDIA TRIAL PRESENTATION

By: Wendi A. Rogers, CP

1. Possible Equipment Needs:

Notebook Computer; Document Camera (Elmo); Screen; Speakers; External Monitors; Cables (VGA, Audio Extensions & Filters; Cable Splitters or modifiers); Switch and/or splitters; Power strips; Extension Cords; tables & stands for equipment; Laser pointer; All in One Scanner/Copier/Printer; USB Drives; and External hard drive.

2. Types of Media:

Video/DVD (depositions and other); Images of Documents; Graphics; PowerPoint; Timelines; Transcript Text; Photos; Foam Core Blow-Ups; Audio tracks; Captures from Video.

3. Video/DVD Considerations:
   - Format of Video: MPEG 2, VOB, MPEG 1
   - File Storage (External Hard Drive, USB Drive, Local Hard Drive, Disk.)
   - Method of Display (Trial Presentation Software; PowerPoint; DVD Software; TV & DVD player)

4. Document/Photo Display Considerations:
   - Computer File Type: Tiff, JPEG, Gif, BTMAP
   - Quantity of Documents and method of organization
   - Clarity of Document on Screen
   - Method of Display (Trial Presentation Software; PowerPoint; Document Camera; Foam Core Blow-up)

5. Notebook Computer Setting Considerations:
   - Screen Savers
   - Virus Scans
   - Power Hibernation
   - Active DirectX Display
   - Monitor Resolution
   - Display (Dual vs. Single Monitor Settings)
UTILIZING TECHNOLOGY FOR CASE MANAGEMENT

I. Organizing the file:
   A. Digital Documents
      (1) Directory/File Protocol
      (2) File Format
      (3) Case Management/Document Management/Knowledge Management
      a. Software that provides the ability to find documents and emails quickly.
      b. Digital Indexes.

   Free Windows Program Download:
   http://www.microsoft.com/windows/products/winfamily/desktopsearch/choose/windows
desktopsearch.mspx?tab=Install%20It

   Google Desktop Free - http://desktop.google.com/

   www.x1.com - $50.00 per license (email & document files)
   www.isys-search.com
   ISYS Email Search - $30.00 per license
   ISYS8: Network Documents and Email. $2,000 - 10 seat network

   B. Paper Documents and the Hard File
      (1) Organizing the File by Category of Information
      (2) Indexing the File - Use Word/Wordperfect to Create Forms or link through Database. (see attached Model Index)
      (3) Converting Documents for text and searchability. www.abbyy.com

II. Document / Discovery Management
   A. Relational DB e.g. Summation (www.summation.com), Concordance (//law.lexisnexis.com/concordance)
   B. Document Management: iPro (www.iprotech.com)
   C. Case Management: CaseMap Suite with PDF plugin (http://law.lexisnexis.com/casemap); Legal Files: www.legalfiles.com
   CaseMap 8 - Import PST files, convert to PDF, sort and search for responsive emails; bates number and export for production.
III. Media Management

A. PDF - Document Storage and Production
Acrobat can be used for converting documents to other formats, Bookmarks, extracting and inserting pages and packages, Bates Numbering, Searching Text.

B. Photo Management:
(1) ACDSee: www.acdsee.com ($49.00 - $129.00 pro)
(2) Shutterfly Suite: http://www.shutterfly.com/studio/overviews.jsp (free)
(3) Picasa: http://picasa.google.com/ (free)

C. Sending Large Files:
www.yousendit.com (starts $9.99 mo. 2 GB with drop box, 40GB storage & 14 day expiration, email plugin)
www.sendthisfile.com (starts $4.95 mo. 500MB, 6 day expiration)
www.pando.com (1 GB free, 3 GB $24.99, 14 days)

D. Evidence Presentation
(1) Trial Presentation Considerations. See attachment.
   www.verdictsystems.com - Sanction & Verdical
   www.indata.com - Trial Director
   www.visionarylegaltechnologies.com - Visionary

(2) Document Format
   Use D/B to export PDF’s. Use Vendor to convert files to single page tiffs and create load files for Trial Presentation software.

(3) Video Format
   MPEG-1 (Standard DVD format will not work with video editing programs including Trial Presentation Software or PowerPoint)
   Editing Video without trial presentation software: Look for Windows Movie Maker on your computer as most of the newer computers come loaded with it. Check the software that comes with your digital movie camera. Pinnacle (www.pinnaclesys.com) and Ulead (www.ulead.com) are commonly included. Recommend Sony Vegas: www.sonycreativesoftware.com.
IV. Graphics and PowerPoint

A. PowerPoint can be used to create a lot of the graphics you need. They can be converted into other file formats such as JPEG and blown up or imported into trial presentation software.

B. PowerPoint is a linear presentation program so its use should be restricted to presentations that flow such as opening or closing argument. It can also be used with experts where the testimony is technical and needs graphic representation and for which the line of questioning is mapped out.

C. When PowerPoint files are large and difficult to email consider the PowerPressed plugin. www.powerpressed.com $19.99 for full license or $11.99 annual. It can take 20mb down to 1mb.

D. Graphic Programs:
   Photoshop (elements version is cheaper)
   Paint Shop Pro (Corel product. Very reasonably priced)
   Corel Draw/Paint Suite (Same capabilities as Adobe Illustrator at a much lower price)

E. Need Computer Training? Try www.vtc.com. For $30 a month you can take online courses in a number of software programs including PowerPoint, Corel products, Adobe products, Microsoft products, Sony Vegas, etc. Cancel when you are through training.