

A Case Study in Trial Director®

By Andre Lagomarsino

This article was originally published in the November 2005 issue of Communiqué, the official publication of the Clark County Bar Association. It is reprinted here with the approval of the author and magazine.

As defense counsel in a recent wrongful death trial, two local attorneys were faced with the daunting task of presenting the jury with an enormous amount of evidence in the form of edited surveillance video footage, approximately one thousand exhibits, several voluminous depositions, edited video depositions and several other demonstrative exhibits. The attorneys wanted to grab the jury's attention and hold it throughout the trial. Defense counsel prepared and presented their case with a single program that more and more trial attorneys are now using: TrialDirector®.

During pre-trial preparation, the aforementioned attorneys did not have to spend countless hours sifting through boxes, flipping through depositions, and navigating video footage on a VCR. Instead, the attorneys performed a Google®-style search or simply entered the exhibit number to select an exhibit, deposition, or video footage from their pre-loaded TrialDirector library. Pre-trial preparation was much more focused because all of the trial exhibits were at the attorneys' fingertips.

Defense counsel had to overcome jury sympathy for the death of the plaintiff's spouse. To mitigate the shock value of the decedent's death, defense counsel began the opening statement with a straightforward description of the fatal event. In "flashback" fashion, counsel then described a series of individual events that contributed to the death. With court approval to present stipulated exhibits to the jury during opening statement, defense counsel conveyed defense-oriented images and pictures to the jury to counter the "story" told by plaintiff's counsel. Today's jurors are more accustomed to electronic presentation of information (TV, movies, internet) and the images presented by defense counsel immediately pulled the jurors to the edge of their seats.

Video depositions and digital exhibits were used during cross-examination to impeach the witnesses. Deposition clips were prepared on key points of deposition testimony. If a witness testified inconsistently, the attorney would simply say, "Play clip 3" to show the former inconsistent statement. More than one witness blushed and several jurors nodded in response to the electronic impeachment.

For closing argument, the attorneys treated the jury to an Abbott and Costello "Who's on First" style compilation of video clips and digital exhibits to show how several of the witnesses were misrepresenting the facts. Some witnesses were compared

against different witnesses and other witnesses were compared against their own prior testimony. The jury clearly identified with the electronic presentation of the evidence.

Plaintiff's counsel was prepared for trial and was an effective advocate. However, the defense attorneys' case *appeared* to be more organized. Defense counsel was able to display exhibits without the fumbling associated with oversized boards and easels. There was no "down time" during defense counsel's presentation.

Known for its simplicity and cost-efficiency, TrialDirector seamlessly presents exhibits in almost every format. Documents, photos, video depositions, Acrobat®, PowerPoint®, Word®, Excel® and 3D animations can be integrated within this exceptional program. The key difference between TrialDirector and other programs like PowerPoint is that Powerpoint is essentially a slide show program. Conversely, TrialDirector allows the attorney to select an exhibit in almost any format, out of order, and within seconds. TrialDirector's database, search engine, synchronized deposition transcripts and compatibility with other software programs makes it a superior product.

In a case involving many exhibits, it is much more cost-effective to have a TrialDirector presentation instead of foam board blow-ups. TrialDirector costs approximately \$600. The cost of digitizing exhibits is minimal. In TrialDirector, thousands of videos, documents and other images can be displayed in oversized fashion. By way of comparison, a single color foam board costs upwards of \$100.

TrialDirector is strongly recommended in large cases and highly recommended in all other cases. In the case described above, the jury rendered a defense verdict.

Andre Lagomarsino, Esq. is a litigation specialist with Las Vegas Legal Video and can be reached at andre@lasvegaslegalvideo.com.

For more information about inData TrialDirector software, call 800-828-8292 or visit www.indatacorp.com.