VIDEO DEPOSITIONS
101 & 201:
EVERYTHING YOU NEED TO KNOW

WHITE PAPER
By Samantha L. Miller
INTRODUCTION

People, including jurors, have come to expect more than just paper to tell a compelling story. We have been spoiled by Hollywood and the technology revolution. We have come to expect the visual effects we see on CNN, or videotaped action as seen on reality television shows.

Hard copy depositions, read back in the courtroom, are old school. Successful practice today often means video presentation of depositions. Video has another big advantage that the transcript alone does not have - body language as a form of communication.

There are several considerations when deciding whether to video tape a deposition. One of the most common reasons to video tape a witness is if the attorney has reason to believe that the witness may be unavailable to testify live at trial, whether due to illness, geographical distance, or some other reason. When a witness is unavailable at trial, the attorney may introduce the testimony from their deposition or other legal proceeding without the testimony being considered hearsay. (See Federal Rule of Evidence 804.)

Capturing a witness’ body language on video can also help your case for impeachment purposes. Rather than just referencing the transcript, with video you can show the jury the witness saying something to the contrary in living color and sound. The effect is much more powerful than a quoted passage in a flat transcript.

As seen in court, the way someone answers a question can be as important as the answer itself. Is the witness hostile? Do they look sincere? What is their body language conveying? Capturing a witness’ body language, inflection, and emotion on video can tell stories that no paper transcript could ever communicate.

Many attorneys routinely videotape depositions so they have the advantage of seeing the deponent’s body language as they answer questions. If you choose to videotape, what are some factors to consider?
VIDEO DEPOSITIONS: GETTING THE BEST QUALITY

WORK WITH A SPECIALIZED LEGAL VIDEOGRAPHER

Always book your video depositions with a reputable, experienced videographer who specializes in legal proceedings. The videographer who taped your cousin Larry’s wedding may have done a wonderful job, but that does not qualify him to record a legal proceeding.

Legal videographers are trained professionals who typically obtain a special certification in recording legal proceedings through one of several national organizations. They are also aware of the techniques to effectively record a deponent’s testimony with little distraction to the proceeding and for best visual impact.

How to Find a Videographer

There are several ways to find a reputable videographer. Many court reporting agencies have videographers on-staff or work closely with independent legal videographers with whom they have an ongoing working relationship. You can ask your court reporting agency for a referral, or select a videographer on your own.

Organizations such as the NCRA (http://clvs.ncraonline.org/Directory/) and the American Guild of Court Videographers (http://www.legalvideographers.com/find.php) provide directories of certified videographers on their Web sites. Just as attorneys develop a relationship with certain court reporters, you may find that you prefer working with a certain videographer.

Common Videographer Certifications

- National Court Reporters Association (www.ncraonline.org) offers the Certified Legal Video Specialist certification
- The American Guild of Court Videographers (www.legalvideographers.com) offers the Certified Deposition Video Specialist (CDVS) certification
What to Expect from Your Videographer

A good legal videographer will:

▷ **Capture Quality Audio**

The videographer will use highly accurate microphones to record the proceeding and parties to obtain the best audio quality. Typically, the witness and questioning attorney will be individually “mic’d” with lavaliere microphones. A table microphone is also used to capture objections. The videographer will continually monitor the audio feed and adjust as needed to capture clear and balanced audio levels.

▷ **Establish a Proper Setting for Filming**

The videographer will establish a setting that will keep the focus on the deponent and minimize visual distractions. For example, if filming a witness in a glass enclosed conference room, would you want to see numerous people walking behind the witness while they are testifying? Probably not. If a proper, dedicated deposition chamber is unavailable, many videographers will either suggest the best spot for shooting, or even bring backdrops and lighting kits in order to establish a quality background.

▷ **Be Minimally Intrusive**

Legal videographers are professionals who understand that this is a legal proceeding and will generally blend into the background.

▷ **Understand the Technology**

A good legal videographer understands the latest technology and its proper usage. Even when a witness is recorded perfectly, you don’t (usually...) want them to appear tinted green in the final video product! Use of three-chip digital cameras or other superior recording equipment will ensure a clear picture, which is pleasing to the eye and not distracting to a jury.
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VIDEO FORMATS

OK, you’ve taken the plunge and decided to videotape your next deposition. Now what? You should discuss with your videographer the format in which you want the video deposition delivered.

Encoding & Syncing

The first question to answer is whether you want the deposition video encoded and synchronized (“synced”) with the transcript text. Some videographers will encode and sync the video automatically as part of their services, others may ask first, or not at all. Using these services may sometimes incur an extra charge, but are usually well worth the expense.

Encoding converts the video to a digital format that will allow you to review the deposition on a computer. The syncing process matches the transcript text to the video, so that when you jump to a specific place in the proceeding, you can see the corresponding text and video together.

MPEG-1 or MPEG-2

If you have the video encoded and synced, the next question is whether you want the final format in MPEG-1 on CD-ROM or MPEG-2 on DVD. Currently, MPEG-1 on CD-ROM is the standard industry format for video depositions. The MPEG-1 format is compatible with most legal software applications, in particular litigation support and trial presentation software programs like CT Summation®, LiveNote®, and TrialDirector®. These types of software programs allow you to easily extract parts of a deposition video as video clips when you prepare your case for trial.

What is encoding and synchronization?

Encoding

Encoding is the process of converting deposition video tapes to a digital format stored on a CD or DVD. You get quality video that runs on your computer, and is easily duplicated.

Synchronization

Your encoded video file is synchronized with the court reporter’s ASCII text. Synchronized depositions are the easy way to review and locate key testimony, and create and export clips that contain both the video and the relevant text.
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The MPEG-2 on DVD format is becoming more popular, especially since some videographers record straight to DVD which obviates the need to encode after the fact.\(^1\) An advantage to MPEG-2 encoding is that you can play the DVD on a standard DVD player and the quality of the video may be better than MPEG-1 format.\(^2\)

An important detail about MPEG-2 is that you cannot create video clips or organize video clips on your DVD player for trial. Further, DVD format is not compatible with all software applications, especially with many of the litigation support or trial presentation programs on the market. To use DVD video with your software applications, you may be required to separately locate, purchase, and install a particular codec viewer to work with the DVD data.\(^3\)

Finally, keep mind that although the video quality of DVDs may initially appear better than MPEG-1 format, the quality may be limited by the resolution of the projector and other hardware used at trial.

If you would prefer to receive MPEG-1 data on a single DVD disc, instead of several CD ROMs, your videographer should be able to create a DVD data disc. Using a DVD to store MPEG-1 video will allow you to store around 4 times the data on a single disc, while still using the simpler MPEG-1 playback.

**Bottom line:** When in doubt, ask for MPEG-1 on CD-ROM or DVD data disc unless you are familiar with MPEG-2 file types and their use.

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1. Although you would still have to synchronize the video to the transcript text, even if recorded to DVD.

2. The encoding settings for MPEG-1 can be adjusted to greatly increase the quality of the video, although the resulting video files may take up considerably more memory.

3. InData software products such as TrialDirector, TimeCoder Pro, and DepoView support MPEG-1 and will also work with MPEG-2/DVD if used with the proper codec package. For example, the Elecard MPEG 2 Decoder (www.elecard.com) does work with inData's software products for video. For audio, you can use the AC3Filter Codec (www.ac3filter.net).
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MPEG-1 on CD-ROM

Pros

- Currently the industry standard format
- Compatible with most software applications, including your litigation support and trial presentation software
- Bit-rate is adjustable by videographer to control visual quality

Cons

- Your videographer will usually have to convert the recording tape or DVD to MPEG-1, sometimes an extra charge, although direct encoding to MPEG-1 is possible
- Standard visual quality may not be as good as standard MPEG-2 on DVD

MPEG-2 on DVD

Pros

- Standard video quality of the proceeding is usually better (e.g. less grainy)
- Some videographers record straight to DVD, so that no conversion would be required
- You can play the proceeding on any standard DVD player

Cons

- Not automatically compatible with all software applications
- Partial elimination of words may occur in chapter breaks
- Ultimately, visual quality can be impacted by the type of hardware used to present the video at trial
Video Deposition Viewers

It has become more common in recent years for videographers to deliver video depositions playable on stand-alone viewer software. These viewers are developed specifically for the legal professional and will usually allow the recipient to review the deposition, create video clips, search for particular words in the transcript, and more.

There are several advantages to using a stand-alone viewer. They are usually inexpensive or provided at no extra charge as part of the videographer’s service. They are generally very easy to use, with controls similar to those on a DVD player.

Stand-alone viewers are also very convenient. With a stand-alone viewer, you can pop the video deposition into your computer and review testimony right away, without the need to load the video into a separate application. Viewers often provide basic editing and capture functionality, so you can work with your deposition video even if you don’t own any litigation support or trial presentation software programs. See Figure 1 below, which represents an example of what your video would look like in a popularly used stand-alone viewer.

Figure 1 - The inData DepoView Video Viewer

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4 Video must typically first be encoded and synced, to work within these types of viewers.
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Handy Check List

To recap this section, here’s a check list of what to discuss with your videographer prior to your deposition:

- Will he encode and sync your video? (Yes/ No)
- Will the video be delivered on CD in MPEG-1 format or on a DVD in MPEG-2 format?
- Will it be delivered with a particular viewer? (e.g. DepoView)
- Can it be provided as a load file suited to your litigation software?

SOFTWARE PROGRAMS TO WORK WITH VIDEO

While stand-alone viewers provide some basic functionality, there are many other popular litigation-specific software products that offer advanced capabilities when working with video. Will you be importing the video into a particular software application like TrialDirector®, LiveNote®, CT Summation®, or Concordance®? If you have one or more of these products, or intend to use them, you may want to tell your videographer in advance.

Some products may suggest or even require certain load files that will make it easier for you to import the video transcript into the program. For example, CT Summation software products (Summation Blaze® LG Gold and iBlaze®) will accept video transcripts in the .SBF format. The end-user can simply drag-and-drop the .SBF file into the program and the video transcript automatically loads. The court reporters or videographers create the .SBF files with a free software program offered by CT Summation called TranSendCR® Plus. Other litigation programs may have similar capabilities and requirements.

5 A videographer or court reporter can download a copy of the TranSendCR Plus software program from CT Summation at no charge at: [http://info.summation.com/courtreps/listing/order_transendcr.asp](http://info.summation.com/courtreps/listing/order_transendcr.asp)
Litigation Support Software

Many popular litigation support and transcript management programs allow you to view a video transcript along with the scanned exhibits, giving you a full digital version of the deposition. Litigation support software programs are designed to manage and organize your case evidence, but not necessarily present it at trial.

If you do create video clips in these programs, you will likely need to export them into a separate trial presentation program. Some paralegals and attorneys opt to create video clips directly in their trial presentation software, to avoid the hassle of exporting files later.

Figures 2-3 below represent some of the popular litigation support software products on the market and how they display video depositions.

Figure 2 - LiveNote

Figure 3 - CT Summation iBlaze
Trial Presentation Software

As discussed in the introduction, video can make a significant impact when used at trial. A human, even their video doppelganger, will always have a stronger impact on a jury than testimony read from a paper transcript.

Trial presentation software programs specialize in presenting evidence in powerful ways. Documents, video depositions, photographs, native electronic files, and any evidence that can be projected onto a video screen can be managed and displayed creatively in a good trial presentation program.

You can use a trial presentation program to organize your trial notebook and stage the exhibits for the jury with annotations or call-outs to focus their attention. Video depositions can be presented alongside their matching exhibits. Many trial presentation software programs integrate with litigation support software, allowing an easy right-click of the mouse to share data between programs.

Figures 4-6 below shows an example of how an attorney might present a video deposition or other video to a jury using trial presentation software.

Figure 4 - inData TrialDirector
Figure 5 - inData TrialDirector

Figure 6 - inData TrialDirector
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CONCLUSION

While remembering all the details of video deposition technology may be the last thing on any attorney’s or paralegal’s mind, it is still beneficial to know the basics of a quality video deposition and how it can ultimately be used to their client's advantage. Remember, keep an open dialog with your videographer about your expectations and you will be pleased with the results.

About inData Corporation

Founded in 1985, inData is a technology company specializing in the management and presentation of information. For legal professionals dealing with the challenges of litigation, inData develops innovative software and provides personalized eDiscovery and trial consulting services. Products include TrialDirector®, TimeCoder™ Pro, TimelineXpress®, DepoView™, and inData inVentory™. For more information about inData’s products and services, visit www.indatacorp.com or call 800-828-8292.

About the Author – Samantha L. Miller, Esq.

Samantha Miller is the Vice President of Marketing for inData Corporation. Prior to joining inData, Ms. Miller served as Director of Marketing and Professional Development for Summation Legal Technologies, a leading litigation software company. She has published several articles on litigation technology in national publications such as the National Law Journal and the Journal of Court Reporting. Previously, she practiced law in Philadelphia, Pennsylvania as a commercial litigator. Ms. Miller is admitted to practice law in the Commonwealth of Pennsylvania, the State of New Jersey, and has also passed the California Bar exam.