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Depositions

LegalTech

Deposition Technology

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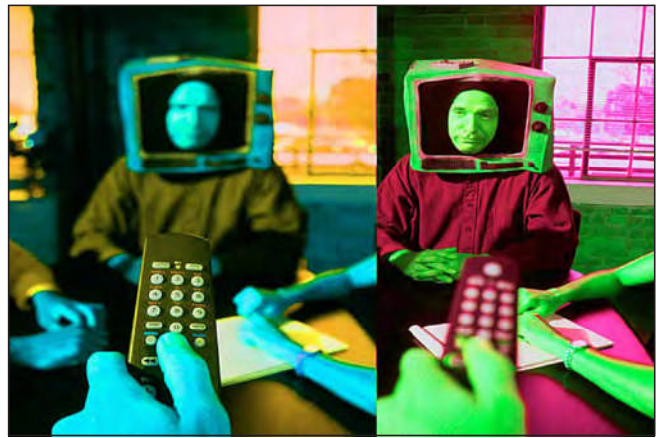
It is axiomatic that ninety percent of written discovery is useless, which is why we rely on depositions. Depositions are where cases are won and lost—the information learned in a deposition can either force the opposing party's hand in settlement, or provide the final axe swipe at trial. In either event, depositions are the heart and soul of the circuit court case.

We go to great lengths to prepare for depositions—find sample outlines; review the existing evidence; consult jury instructions to verify what we need to prove; review prior depositions from the deponent; and plan out a Rules of the Road-centered “Miller Mousetrap.”¹ But how much thought do we give to how the deposition is to be used?

There are several technology-related questions regarding depositions that you must ask yourself. Some of these questions must be asked before the deposition (at least 30 days before, in some instances).² First, is it important to have the deposition on videotape?³ Second, how should you place your order for the deposition from the court reporter?

Should the Deposition be Videotaped?

There is a vocal minority of lawyers who advocate that most depositions, particularly those of defendants, should be taken by video. The logic behind the argument is compelling. First, defendants tend to be less polished for the deposition early on, and a video can highlight a number of features that are useful for the jury in evaluating the case and credibility of the witness. Defendants frequently attend in their street clothes. Depending on how informal their dress is, this can indicate to a jury that the defendant does not take the case seriously and is not respectful of the process. Also, defendants are rarely fully prepared for their deposition, even when it is



noted as a video deposition. A video can highlight that lack of preparation in a way that a paper transcript cannot. Lengthy pauses after questions are asked are invisible in the transcript, but almost painful to watch by video. Facial expressions, attitude, and posture can influence a jury's feelings about the defendant.

Even if a defendant cleans up for trial, dresses in a suit, and gives the Court the proper deference, a deposition, including a video deposition, can still be played back at trial. Instead of reading both sides of a boring transcript, the video brings the case alive for the jury. Presented to them on the big screen in 30-second snippets, the video is a welcome break from the talk-fest that is a trial. It will grab the jury's attention, and they will remember it best among all of the testimony.

The way to present it to the jury is simple. Your videographer should provide you a DVD, inclusive of software enabling you easily and quickly make clips of deposition by selecting the portion of the transcript you want to use, and converting it to a video file on your computer.⁴ Many court reporting companies make this so simple that it can actually be done while you are in trial in thirty seconds, making it the perfect tool for cross-examination and closing argument.

How to Place Your Deposition Order

In these days of cost consciousness, every law firm should be mindful of simple ways to save money. At the conclusion of a deposition, when you place your order, you have an opportunity to do just that.

When the court reporter asks you what you want, the answer is simple. I always order an E-Transcript and an ASCII file to be sent to me by e-mail, and I specify that I do not want a hard copy. This gives you maximum flexibility, without the postage costs (and, most court reporters seem to

¹ Rick Friedman And Pat Malone, *Rules Of The Road* (2010); Philip Miller, a frequent speaker on the AAJ lecturing circuit, created “the Miller Mousetrap,” a tactic used at trial or deposition to show that the witness either agrees with the common-sense rules of the road, or looks foolish for disagreeing.

² Md R. Civ. Proc. 2-412(B).

³ “Videotape” is a carryover term. Most courts have DVD players, which is the preferred format for replaying a video deposition. Furthermore, if you are taking a laptop and a projector to trial, DVDs can be played onto the big screen straight from your computer.

⁴ These video files can also be incorporated directly into a PowerPoint presentation.

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send depositions out by one or two day Federal Express or UPS, which increases the law firm's costs).

What can you do with an E-Transcript?⁵ You can print full or mini-transcripts to your printer, or convert them to Adobe .pdf files to be saved onto your computer. You can print a word index, and you can easily search the deposition on your computer by simply typing the word to be found, or clicking on any word in the index. Additionally, E-Transcript documents have built in electronic security verification to prove that the text has not been tampered with.

The usefulness of E-Transcript goes further—for attorneys writing briefs or preparing a PowerPoint for trial, specific portions of the transcript can be selected, copied and pasted. The final product automatically contains the deponent's name, date, page and line numbers and formatted text. This saves time—no longer does the deposition need to be retyped word for word.

The ASCII is simply a text file, and it seldom needs a second thought. However, it is nice to have as a backup in case anything goes wrong with the E-Transcript file. Like E-transcript, text can be copied directly from the ASCII file and pasted into other documents or applications, minus the citation.

⁵ Real Legal (visited Nov. 2, 2010) <<http://www.reallegal.com/>>.

Conclusion

There are many other types of deposition technology, including LiveNote (realtime text to your laptop during the deposition), and live deposition video-streaming. But every attorney should be familiar with E-Transcript and the simple methods to use a video deposition at trial. This technology, all of it provided by MAJ sponsors, will save you time, money, and help you to win cases. ■

Biography

John J. Cord (Plaxen & Adler, P.A.) graduated from the University of Colorado School of Law. He concentrates his practice on assisting victims of automobile negligence, medical malpractice, and defective products. He is licensed to practice in Maryland, the District of Columbia, Pennsylvania, Georgia and Minnesota. He is a member of the American Association for Justice and is a former chair of the MAJ Technology Committee. Follow him on Twitter at @johnjohncord.