

Since the advent of ASCII transcripts, court reporters have been at the forefront of litigation technology. As technology continues to evolve, court reporters can use technology to play a critical role in the future of our legal system.

PRESENTATION OF ELECTRONIC EXHIBITS AT DEPOSITION

Some litigation-support software programs enable attorneys to import electronic evidence in native format. This allows users to search underlying metadata, aiding in the selection of electronic evidence files as exhibits. In other cases, with voluminous exhibits and/or multiple parties involved, attorneys may routinely convert their case documents to TIFF or PDF files, since it is much easier and less expensive to handle electronic exhibits on a CD than paper exhibits in banker's boxes.¹

In the September *JCR* we introduced native files (i.e., electronic evidence) versus image files (i.e., PDF, TIFF) and the advantages of each. *Electronic exhibits* can exist in either native or image file formats. Regardless of an exhibit's manifestation, the growth of electronic exhibit usage means that traditional methods of presenting deposition exhibits to a witness will need to be modified, and attorneys must carefully consider how to introduce such exhibits. With that in mind, let's explore two possible presentation scenarios.

SCENARIO #1

Counsel Presents Exhibits in Native File Formats

Envision an instance where a witness is confronted with a document that the witness claims not to have seen. The

attorney has brought to the deposition the native exhibit files on CD-ROM. You, as a court reporter sophisticated in the methods of presenting electronic evidence, supply an extra computer for exhibit display purposes. Alternatively, counsel could bring his or her own display computer or a LCD projector. Regardless of the specific configuration involved, the display computer runs the program originally used to create and display the native electronic evidence file at issue.

The witness views the document in question in its native file format. The CD-ROM containing the document can be submitted as an exhibit to the deposition. After the witness denies knowledge of the said document, counsel can use the native application (e.g., Word) on the display computer to access the file's properties.

In our hypothetical example, the metadata indicates that the deponent authored the document. Counsel can now show the deponent, as well as other party representatives in attendance, the display screen that indicates the witness as the author. A *screen shot* of the metadata visible on the display computer screen (an image file similar to a picture) can be taken and printed on a portable printer. Or the court reporter can burn a CD of the exhibits for each party. Or both of the above can take place. The reporter can print a screen shot and submit the paper as Exhibit A-1, and he or she can burn a copy of the CD-ROM submitted by the examining party and mark it as Exhibit A-2.

If the attorney knows with certainty which documents will be used as exhibits, then all exhibits can be introduced on one CD. However, if there is any question whether a particular docu-

ment will be introduced as an exhibit, another option is to capture each document separately on an individual CD.

SCENARIO #2

Counsel Presents Exhibits in Image File Formats

In this scenario, the attorney brings a CD with the exhibits in TIFF or PDF format. The court reporter provides an extra computer for exhibit display purposes and runs the applications that support TIFF or PDF format.² The witness can now view an image of the document in question, made available by the CD-ROM, which can be marked as an exhibit. Because the exhibits are in image file format, the metadata is unavailable.

COMPONENTS FOR DISPLAYING ELECTRONIC EXHIBITS

The presentation of exhibits in these hypothetical deposition settings could take the form of electronic evidence, documents in image format, and hard-copy documents in any combination. Evidence could also be put forward in the form of digital video. The equipment and software required to accommodate the various manifestations of exhibits include the following:

- A computer for displaying documents in either native file format or image format and for possessing the following features:
 - ✦ a monitor or LCD projector for displaying exhibit images and metadata
 - ✦ the specific software required to view an electronic document in its native file format (e.g., Word, Outlook, Excel, etc.), thus allowing metadata to be revealed
 - ✦ software for converting electronic evidence from its native format into PDF format for petrification purposes (e.g., Adobe Acrobat Distiller)
 - ✦ software for viewing image files in PDF and TIFF formats (e.g., Adobe Reader or Windows Picture and Fax Viewer)

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EVOLUTION OF EVIDENCE

H O P P A N D S A M A N T H A L . M I L L E R

- ✦ a CD burner for copying both electronic and electronically formatted evidence for distribution to other counsel
- ✦ a CD-ROM or DVD drive, speakers, and attendant software to present digital audio and video evidence
- A scanner for converting paper documents to PDF or TIFF file formats
- A printer for producing a hard copy of an electronic document for physical marking by the witness and/or for making physical copies of paper documents (i.e., when used in combination with a scanner)

Attorneys using electronic exhibits should consult their reporters in advance of deposition to determine which of the above components the reporter is willing and able to provide, bearing in mind the fees involved for such value-added services.

POST-DEPOSITION DISTRIBUTION OF ELECTRONIC EXHIBITS

Court reporters commonly provide transcripts in electronic format (e.g., ASCII, Amicus, TXT, etc.). Reporters can now also link the petrified deposition exhibits, and even video, to the electronic transcript so that everything is provided in electronic format. The benefits are enormous. Attorneys can immediately view exhibits in tandem with the transcript testimony where they were referenced. Another advantage is that attorneys can search the transcript text for relevant testimony and can instantly evoke the corresponding digital video image, without having to waste time holding down the fast-forward button on a VCR remote control.

Depending on the technology used to produce them, these transcript “packages” may contain their own electronic file viewers. Other such bundles can be imported into litigation-support software that incorporates the exhibit files into a document database for searching and annotation purposes.

Attorneys can give the deposition exhibits to the court reporter in either

hard copy, which the court reporter will later convert into TIFF or PDF format for linking process, or on CD-ROM, as outlined in the earlier scenarios.

EVOLUTION OF THE REPORTER’S ROLE IN HANDLING EXHIBITS

By now you may be thinking, “Great. Another two tons of equipment to lug around.” But keep in mind that, with the relentless march of technology, electronic devices become increasingly smaller and less expensive.

Also consider how a reporter’s toolbox has expanded over the years to aid in the presentation of evidence. Reporters commonly carry realtime display computers, x-ray view boxes, VCRs and monitors, and portable scanners and printers to depositions. In addition, many reporting firm conference rooms are now equipped with video teleconferencing equipment. Offering those amenities not only provides a convenience for your clients but also gives you a marketing edge and an additional revenue source.

In many ways, scanners and CD burners are to electronic exhibits what photocopy machines are to paper exhibits — simply another means of copying exhibits. But today’s electronic transcript-and-exhibit bundles afford faster and cheaper delivery than that of their hard-copy counterparts and provide attorneys with timesaving litigation-support functionality not available using paper, a value-added proposition that more than justifies the additional cost.

Ever since ASCII transcripts arrived on the legal scene approximately two decades ago, court reporters have been at the forefront of litigation technology. During the ensuing years, we have learned firsthand that the only constant in technology is change. By continuing to keep abreast of and embrace the latest technological developments, reporters can take advantage of opportunities to enhance their product and service offerings and, thus, continue to play a critical role in our legal system in the future. ■

FOR MORE INFORMATION

If you’re interested in keeping up with this topic, here are a few of the related Web sites you might find most useful.

Arkfeld, Michael R., personal interview and *The Digital Practice of Law*, www.arkfeld.com.

“ED Glossary,” Copyright 2004 Discovery Resources, www.discoveryresources.org/01_electronic_discovery_glossary.html.

Feldman, Joan E., and Kohn, Roger I., “Top Ten Things To Do When Collecting Electronic Evidence,” Copyright 2001 Computer Forensics, Inc., www.forensics.com/pdf/Ton_Ten.pdf.

Isom, David K., “Electronic Discovery Source Checklist for Plaintiffs and Defendants,” *Commercial and Business Litigation Journal*, Spring 2004, www.isomlaw.com/isom%20article%20ABA%20commercial%20and%20litigation%20journal.pdf.

Juhnke, Deborah H., “Electronic Discovery in 2010,” *The Information Management Journal*, November/December, 2003, www.forensics.com/pdf/Electronic_Discovery_2010.pdf.

Kennedy, Dennis, and Socha, George, “The Electronic Discoverers — Muddling Through the Metadatas Morass,” Copyright 2004 Discovery Resources, www.discoveryresources.org/04_open_mike.html.

The TechnoLawyer Community, Copyright 1997-2002, PeerViews, Inc., www.technolawyer.com.

ENDNOTES

1. To read more about electronic exhibit presentation in the courtroom setting, see “High-Tech Trial Lawyers and the Court: Responsibilities, Problems, and Opportunities, An Introduction,” by Frederic I. Lederer, www.courtroom21.net/articles/HighTech%20Trial%20Lawyers%20andthe%20Court.pdf.

2. Later versions of Windows may contain Kodak Imaging for Windows Preview or Windows Picture and Fax Viewer, which enables one to view files in TIFF format. Adobe Reader, which is available as a free downloadable program at www.adobe.com/products/acrobat/readstep2.html, displays PDFs.