

Legal Video

Don't go to Court Without It!

**By Gayle Marquette, Ph.D., AGCV, CCV, CLVI
Founder/Administrator of the AGCV**

Videography to a trial attorney is like a copy machine to a busy office. It is getting to the point that you cannot survive without it. With the courts continuing to be backed up an average of six to twelve months across the nation, the courts are looking for every technique possible that will speed the litigating process. Depositions have been one of the ways used for years during the discovery phase of a case to secure information that will speed the process. Now, with the advent of videography during the deposition, the editing of the testimony can save many hours of irrelevant testimony that would otherwise have been presented during a trial. More important, the video documentaries that are now produced on a regular basis to be used in court are being effectively used during pre-trial attempts to settle most cases out of court.

Because video evidence content is controlled by the Federal, State and District courts, it is important to know just what will or will not be admissible in a court of law. As you already know, this will also be controlled by the Judge in any specific court. The American Guild of Court Videographers, the nation's largest organization of professional videographers that are trained in all aspects of legal videography, specializes in training and certifying professional videographers in knowing and using the appropriate rules in producing video evidence for the courts. Those trained by the AGCV have become more than just videographers, they have become expert consultants to the legal profession in producing visual evidence for the courts that is effective, complete and convincing.

The old saying that "a picture is worth a thousand words" is more truth than poetry. The juries that are presented with properly prepared video evidence will stay alert and remember far more information than those who simply hear the words without having the advantage of the corresponding visual aid that accompanies it.

We are hearing more and more of new and creative methods on how videography is being effectively used in the litigating process. With 95% of all law suits never making it to court, the "Settlement Documentary" (commonly referred to as a Settlement Brochure) has become the most effective method of conveying the plaintiff's story to the opposing party as it can contain visual information that would otherwise not be permitted to be shown in court. Because there are no rules regarding the content of the settlement documentary, it can be very convincing in bringing about a successful settlement during pre-trial negotiations above and beyond any other method now being used.

The most important use of video is not limited to just "real life" situations. With the advent of extremely effective high-tech computer generated graphics produced on video, the trial attorney can now present a "true to life" re-enactment of an incident which otherwise would not have been available during trial. These re-enactments have become so "real" that some judges are having second thoughts about allowing them to even be shown

in court. They contend that a viewer may believe that the re-enactment is exactly what happened rather than a depiction of what someone thinks actually happened. . Again, these state-of-the-art methods are used very effectively during pre-trial hearings and many times will lead to early settlements.

Another area for legal videography which is becoming far more popular is in video taping the “Will Execution” ceremony. By the showing of a videotape of the ceremony, it will answer one of the most important questions that leads to litigation concerning the validity of the will and that is the “mental” capabilities of the testator or testatrix when the last will and testament was executed. The properly trained legal videographer can assist in the correct method of recording the event so as to remove any doubts as to the validity of the document.

Video has historically been mostly used by trial attorneys, however, it can be effectively used by attorneys in almost every phase of law. One such example was just mentioned above with the estate planning attorney and another area now being used more and more is the video taping of major construction projects (which inevitably end up in court for one reason or another). The astute corporate attorney will suggest the developer, whether the project be private or be federal, state or local government funded, have a “pre-construction” video tape of the surrounding area to establish the conditions of properties prior to the time that the first piece of equipment arrives on site. This can save the developer from paying thousands of dollars in false claims of damages due to construction. This is where an ounce of prevention can save many pounds of grief later.

Another area where video has played an important role for the clients of an attorney is a video can bring the scene of the incident into the court room and have it projected to TV monitors or to a big screen for all to see rather than transporting a jury out to the scene of the incident or crime. Attorneys in the past have passed pictures through the jury which is worse than no picture at all. Every juror is distracted from what is being presented in the trial during the time they are passing the picture from juror to juror.

Tremendous savings of time and expense are made possible by video. The attorney should never think of video as an added expense but rather as a cost saving use of modern technology. The video taping of expert witnesses explaining to the jury the extent of a person’s personal injuries and what the victim had to go through to try to reclaim normal use of their faculties is far more effective than having the plaintiff trying to tell the story themselves on the witness stand.

The same equipment that is used to project the attorney’s PowerPoint outline during the trial can also be used to project video evidence for all to see. We find many attorneys are now using their PowerPoint presentations during opening statements, during the body of the trial and during the closing statements reinforcing important facts in the minds of the jurors. The complete professional legal videographer will be able to assist you from the very first get-go to the final closing of the trial as they are equipped to project your documents, x-rays, photographs, charts, three dimensional items, and the list goes on

and on, to the big screen saving your client much expense in producing the traditional “blow-ups” now used in the nation’s courts today.

The properly trained professional legal videographer understands the “disinterested third party” role that they must play when taking testimony during a deposition. At the same time, they realize that they can also become a vital member of the litigating team when producing the remaining video documentaries and visual evidence that will be used prior to or during a trial. When contracting with a professional legal videographer, the attorney needs to seek out a person that is fully qualified in all aspects of legal videography. That is the exact reason that the American Guild of Court Videographers not only trains professional videographers in producing video evidence that cannot be impeached but also “Certifies” them as “Certified Court Videographers” (CCV) after they have successfully completed the required training. This is the assurance that you as an attorney must have when hiring a certified legal videographer as it gives you confidence that you will receive the professional results you require.

We see video products every day that very well could have been impeached and thrown out of court due to violations in the Federal, State and District Court’s “Rules of Civil Procedure” and “Rules of Evidence.” Even the very storage and delivery of video evidence, the required paperwork that accompanies the video evidence and the proper video shooting techniques are very important and are strictly regulated. Just because a person owns video equipment does not in any way imply that they are fully qualified in the legal arena. As a matter of fact, I will go on to say, if a videographer has not been properly trained in producing video evidence for trial, regardless of the number of years that they have been shooting legal video, they are producing a product that very well could be thrown out of court. The reason it doesn’t happen more often is the attorneys are depending on the professional videographer to be the expert on the subject, not themselves.

In just the last year or so, video equipment has taken a major turn for the better as the AGCV videographer is now producing legal videos on CDs and DVDs leaving the analog tape used by the older video formats far behind! What this is doing for the legal video field is very exciting. Just as all law firms kept a VCR in their offices, now they are equipping themselves with much less expensive DVD players to be able to review video evidence. This newly used state-of-the-art digital equipment saves a great deal of time and expense in doing post production editing cutting the time necessary in post by as much as 90%. It also allows the attorney instant access to specific parts of the testimony when presenting the evidence in court and doing so at a much higher resolution than we could in the past.

When talking about equipment, we must not omit the fact that the AGCV legal videographers will also be taking the testimony under oath with an additional STEREO audio tape recorder. We do this as a courtesy for the stenographic court reporter, if one is used. This allows the stenographic court reporter to listen to the deposing attorney on one track and the deponent on a different track. Now the stenographer can listen to each person separately allowing for a more word perfect transcription.

Another asset the professional certified videographer brings with them is that most of them are also Notary Publics which means they can swear in the deponent and take the testimony without a stenographic court reporter being present. If you practice law in any of the 42 states that no longer require that a stenographic court reporter be present, the certified electronic court reporter (if a notary) can save your client money and if there is need for a printed transcript, it can be taken directly from the audio or video tape provided by the electronic court reporter.

Finally, when training a legal videographer, the AGCV teaches their Certified Court Videographers to use the “Federal Rules” when they are asked to produce a video recording of testimony under oath. The express reason for this is the product they will produce will be accepted in any court in the land. This is very important as the attorney trying a case never knows just how far up the judicial ladder the case will be appealed before it comes to a final resolution. AGCV members are usually the highest paid in the legal video profession and it goes without saying, they are worth every penny they receive. They have “gone the extra mile” to assure you that you will receive professional results, produced with professional equipment in a professional manner.

If you would like to know of some of the things that can be used to impeach damaging video taped evidence, please feel free to contact the AGCV for more information on this very important subject or contact the AGCV Certified videographer in your area. He has a wealth of information available to him/her as found in the AGCV manual, “The Complete Guide to Forensic Videography”.

Dr. Marquette, the founder and administrator of the AGCV can be located at agcv@aol.com or call toll free for a personal consultation to 1-800-678-1990, 9:00a.m. to 5:00p.m. Mountain Time. You can find a complete directory of the AGCV members in the U.S.A., Canada, Europe and the Orient at www.legalvideographers.com. For more information on what it takes to become a certified legal videographer just log on to www.agcv.com.