

PRESENTING EVIDENCE AT TRIAL

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Prepping for Trial

Presenting your evidence
starts before trial

Practice Practice Practice



Types of Practice

- Practice with your client and witnesses
- Take them back to the scene.
- Practice in the courtroom – Witness chair, microphone, etc.

Practice with the Witness

- Tell them they are going to be sworn in.
- If it's your witness, go through your actual direct questions with them a few days before the trial. Leave them with no surprises.

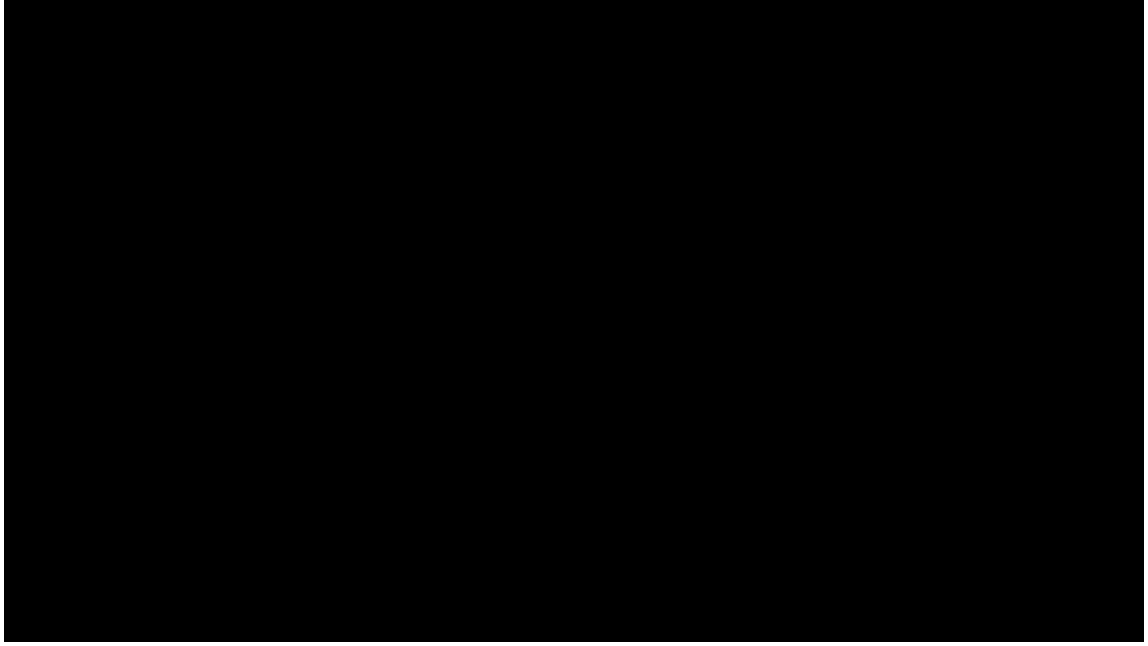
Don't make them
cry before they are
at trial!

Pat Montes Style Witness Prep

- Get to know your client/compartments
- Find out what they were like before the injuries from friends and family
- Walk through every aspect of their lives before, during, and after

Depositions

- What your client says in deposition is all fair game at trial BUT...
- So is what the Defendant says in deposition
- Be ready to use that information



Practice Your Job

Practice how you are going to deliver the evidence

- Your Direct
- Your Cross
- Delivery and order of evidence

Pretrial

Get your ducks in a row
before the trial

Order of exhibits, witnesses and link those up

Motion in Limine

Don't open the door to things
that you have already closed!

Pretrial Rulings and Stipulations

1. Stipulate to as much as you can
2. Get pretrial rulings that will mirror your jury charges
3. However, don't cut out all the juicy stuff via stipulations.

The trial will be boiled down to what really matters
– you'll know what evidence you really need to
present

Trial

Showtime!!

Dorsaneo

- If you do your job with excellence the trial court HAS to work for YOU.
- If you read the rule book once a year, you won't end up as a case study in a law school text book

Get Your Evidence Admitted

1. Pre-mark the exhibit
2. Lay the witness's foundation of knowledge of their testimony
3. Show it to opposing counsel
4. Ask to approach the witness
5. Show it to the witness
6. Ask the right predicate questions (i.e., do you recognize this?)
7. Ask the court to admit the exhibit
8. Let the clerk mark the exhibit into evidence
9. Publish to the jury

Step 6 – Ask the right predicate questions

- Examples are:

“Do you know what this is?”

“Is this a fair and accurate representation of _____”

Ask The Court to Admit The Exhibit

“Your Honor, I ask that what’s been previously marked as Plaintiff’s Exhibit “A” for Identification be admitted into evidence as Plaintiff’s #1”

“At this time, we offer Plaintiff’s ‘A’ (for identification) into evidence as Plaintiff’s exhibit #1”

“Your Honor, I move that Plaintiff’s Exhibit ‘A’ be introduced into evidence”

GET A RULING!!!

Seems Simple, Right?

You get in there and you fumble over your words – forget a step.

Next thing you know.....

Failing to Execute the Magic Phrases

Leads to:

Raising more objections from the defense because they have time to object

Making the judge mad

Distracted or lost jury 😞

Know The Rules Of Evidence

Especially relevancy!

Rule of Relevancy: Rule 401

Evidence is relevant if:

(a) it has any tendency to make a fact more or less probable than it would be without the evidence; and

(b) the fact is of consequence in determining the action.

PRIOR CONVICTIONS

Examples

An unrelated conviction (see motion)

Evidence of drinking but, not a factor in causing the wreck consider *Bedford v. Moore*, 166 S.W.3d 545 (Tex. App.- Fort Worth 2005, no pet.)

Redacting medical records to exclude irrelevant information—what do you want them to see?

Types of Evidence

Demonstrative v. Real

**Know when you want your
demonstrative evidence
admitted so it can go back with
the jury**

**Some stuff, you just want it
seen...not admitted.**

Presenting the Evidence

Technology

Social Media Posts

Issues Raised with Social Media

1. What was actually on the website?
2. Does the exhibit or testimony accurately reflect it?
3. If so, is it attributable to the owner of the site? PROVE THAT!

Two Steps to Use Social Media

Establish relevance with Rule 401

Authenticate with Rule 901

Rule 901

“To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.”

Specifically Helpful for Social Media

Rule 901(b)(1): *Testimony of a Witness with Knowledge* –
Testimony that an item is what it is claimed to be

Rule 901(b)(4): *Distinctive Characteristics and the Like* –
The appearance, contents, substance, internal patterns,
or other distinctive characteristics of the item, taken
together with all the circumstances

Facebook Status Issue

Generally, it would be a hearsay
issue.

However, there are exceptions

Exceptions

Rule 803: Exceptions to the Rule Against Hearsay – Regardless of Whether the Declarant Is Available as a Witness.

Rule 803(1): **Present Sense Impression** -- A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.

Rule 803(2): **Excited Utterance** – A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that is caused.

Rule 803(3): **Then-Existing Mental, Emotional, or Physical Condition** – A statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will

And if they are REALLY STUPID...ADMISSION AGAINST INTEREST!!!

Technology

Using Technology to Present Your Case

Equipment to Use

Ipad with a data plan

Airport Express

AppleTV

Projector with screen and speakers

Wireless keyboard

Apps to Use

Dropbox – a storage facility for all documents

TrialPad – An organization and presentation app

Notability – a handwriting and recording app

Keynote – PowerPoint for Ipad

Court Room

- Use the whole room
- Not only say your evidence, show your evidence.
- Turn the courtroom into the scene
- Bring your witness off of the stand
- Act out what happened with the witnesses

Look and Act Presentable

- Make sure your appearance is presentable
 - Dirty fingernails on the Doar presenter!
 - How you dress matters.
 - “if your lawyer has a flip phone and his suit doesn’t fit...you are gonna LOSE”
-Better Call Saul
 - Know your audience
 - When appropriate, be friendly and polite
 - Be prepared. Don’t fumble with anything
 - Establish a relationship with the jury

Google Earth

If you don't use this to show the scene... sheesh



Depositions via Video

- If you aren't making video cuts, you are boring the jury.
- Laser in on what you want the jury to focus on. Arrange the clips in the way that serves your argument the best
- DO NOT GO IN CHRONOLOGICAL ORDER
- **IF IT BLEEDS, IT LEADS!**

Presenting Witnesses

- LIVE witness is always best
- Consider a video/skype call with an expert that couldn't be there personally. Will the court allow it?
- Video is boring unless it is clear and concise and to the point. If the point isn't made right away, you didn't cut it right.
- Sometimes, reading the deposition to the jury is BETTER than video. Again, if it's short and to the point.

Judge's Advice

- Do NOT ask questions you don't know the answers to
- Don't feel like you have to get the last word in or re-direct and re-cross.

LET. IT. GO.



Questions

- Cell Phone Records
- Seat Belts
- Pain Scale