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## Trial Presentation Using InData's Trial Director

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Articles

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### Lawyer to Lawyer: First Encounters with Trial Director Alan J. Steinberg and substantially edited by J.D. Keane

Do you remember what it was like to be able to remember everything?

I am frequently reminded of this ability (or, in my case "disability"), as I practice law with my son, Les, who is some 22 years younger than I. He forgets nothing! (He thinks.)

More recently, I had occasion to involve myself in a very paper intensive litigation matter. By the time most of the discovery had been completed, not counting the 20 or so depositions, I had personally read and reviewed 14,000 pages of documents. I know this because my database counted each and every page.

Fortunately, I was using Summation for the database and Trial Director for imaging. The combination of the two programs enabled my small firm able to remain on a "level playing field" with a much larger law firm. Using Summation and Trial Director, I didn't need multiple clerks and associates to search or retrieve documents for any other phase of "document management". By

coding, and annotating the document database myself, I knew first hand where to find what I was looking for at all times.

Benefits of a Database and Image Program Let me start with several advantages of using a database together with an imaging, viewing and evidence presentation program, such as Trial Director.

First: You won't lose documents.

Second: Retrieval of desired documents is extraordinarily quick.

Third: You have increased control of the facts embodied within the images, and control of the facts may give greater control of the case.

Before explaining why the First, Second and Third reasons are beneficial, I want to explain what a database is, and what a Trial Presentation Program does.

### What Is a Database?

The database is a repository of information that is segregated and, thus, broken down into separate categories of information found in the "database fields." The User or the User's agents, i.e. paralegals or members of a "Service Bureau" put the information into the fields manually with a "fill in the blanks" form on a computer.

The Summation litigation support program comes to the user with a default form. While I am certain that the default form would be sufficient for many types of litigation, I opted to create a custom form. The form was prepared with the help of Indata

Corp., a Service Bureau (and creator of Trial Director) with extensive experience in automated litigation support. InData suggested that we create a custom database tailored specifically to our case and our style of litigation. The resulting form in my opinion, was more useful to us than the default form within Summation. (See Leslie Baker Mills article in this issue on designing a coding form in Summation.)

By creating one's own coding form, you gain a database that is specific to your needs. It stands to reason that this will enhance "User Friendliness."

### Document Numbering

In pursuit of the discovery process in the various courts, the attorneys are eventually presented with voluminous copies of documents. Typically, there is some agreement about page stamping or Bates Numbering the copies. With an agreement on the manual numbering methodology the attorneys will have a system for identifying the documents in the database as well.

The coding of the documents in the database will ordinarily use a prefix and a set of numbers. The prefix is generally tied to the source of the discovered documents. Thus, documents located at First National Bank, numbered 1 through 4,666, would bear an identification such as follows: FNB01000001, FNB01000002, for e.g. First National Bank Box 01, Document Numbered 1 and 2 and so forth. As you can see, the naming convention begins with some identifiable initial set of the source of the documents to be placed in the database. The next group of numbers represents the box where the original scanned copies are

maintained. The balance of the numbers represent pages within the documents. Obviously, one could also utilize document numbers and then pages. I leave this up to the user's discretion.

By utilizing a descriptive series of numbers, the user can quickly locate original documents when needed for "chain of proof issues" and other foundational needs.

There are a host of protective issues on handling of documents. If the original documents or the first generation photocopies are Bates stamped, the service bureau can capture the Bates numbers right on the scanned images.

One might question the need for manually stamping or labeling page numbers if the service bureaus have automatic equipment which can assign Bates numbers to the source documents as well as the output images or print copies. Allowing a service bureau to perform this function automatically saves the client a significant amount of money as it is much cheaper to have the computers do it then real live people.

Once built, the database is thus capable of categorizing document profiles by the various fields, and combinations. In addition to the descriptive, clerical fields with bibliographic and inventory information, Summation allows for higher level fields for legal assistants or lawyer to add evaluative data such as "Attorney Notes," "Issues" and "Hierarchy of Importance".

Say, for example, you have a need to review all documents found at First National Bank. You can enter FNB into the search box of Summation, and

faster than you can blink an eye, all of the FNB documents will be available for you to review in the Form mode or in a series of columns picked by the user.

Best of all, without getting up from your desk, you can click on the image button of a desired document (s) to see it in Trial Director (or another image viewer) for further review or annotation.

### Add Issues and an 'Importance Factor"

As another option and a concrete example, it might be beneficial to categorize for review and note-making all items within the database pertaining to "ISSUE X & SO." You might even limit the search to documents having an importance factor of 5 on a scale of 1 to 5. The Summation query form and search engine will do Boolean searches of increasing levels of complexity.

When the lawyer has finished viewing the relevant images, she can start on Importance Level number 4 and so on. Bringing order and organization to the preparation process is a strong incentive to do your case preparation with a database and image viewer.

### What Is Trial Director?

Trial Director is predominantly a program used for viewing documents, photographs, videos, animations and other visual media from a computer.

In my case, Trial Director made sense for two reasons: first, as a document display mechanism for trial preparation and as a reference tool; and

second, during the litigation at the time of trial for "demonstrative" purposes.

One of the key features of Trial Director is its ability to project documents, photographs and other media to a large monitor or screen for viewing by judge and or jury.

A busy trial attorney will appreciate that preparation in advance of trial is the key to success. The use of programs such as Trial Director allow the user to pick objects for projection from a directory type list by using the mouse to select the item. Then just highlight the desired object to display it on the screen in "View" mode. The problem with this approach is that the jury has to see all the clicking and pointing as well as the directory tree. Trial Director has a facility to do this without distracting the jury. The user needs to use a light pen and bar code method for the projection.

### Printing Bar Codes

Trial Director will also let the user print out the documents that are stored on the CD-ROM or hard drive for whatever purpose. One of the options in the print function is the "Print with Bar Codes." When the selected document or item is printed, the hard copy shows a bar code stripe at the bottom of the document. That bar code is tied to the document and its position in the database. When the user swipes the bar code reader across the bar code stripe, the program calls the document or item associated with the code for projection and viewing.

### Automating the Order of Proof

By means of pre-planning, the trial attorney may establish the order of proof in a sequential fashion. With the rehearsal of the witnesses, the attorney can catalog and categorize the exhibits in a "playbook." Swiping of a light pen on the bar codes in the playbook will project the various documents upon screens and monitors situated throughout the court room.

## Tools for Document Highlighting

Trial Director, in its "View" mode, presents the User with a "Palette of Tools", each used for different emphasis. There are tools to draw straight lines or arrows and tools for color for differentiation. You can draw triangles, boxes, squares, and whatever your imagination or needs lead you to draw on your exhibit. You can redact or black-out selected portions of an exhibit -- for confidentiality reasons, for example. You can select portions of text and project a cutaway for greater emphasis. The cutaway method enlarges portions of text, bringing the important sentence or line to the foreground while keeping the balance of the document in the background. This kind of projection is very effective and interesting to view.

## Safeguards in Court

Trial Director has an "instant off" switch, activated by hitting the "esc" or Escape key at any time during the view mode. Thus, an error by the operator need not bring down the entire show. If the wrong view is shown, or upon a properly made objection, the operator can "go dark" until further discussion with the Court.

## The Trial Lawyer Stays in Charge

Thus, through the use of highlights, cutaways and annotations, the attorney is in charge of what the judge or jury sees. Even with last minute changes right in court, the trial lawyer can draw attention to the key elements of the exhibit and capitalize upon the ever shortened attention span of the trier of fact.

## WHAT WILL TRIAL DIRECTOR AND SUMMATION DO FOR YOU?? YOU WON'T LOSE (OR MIS-FILE) DOCUMENTS

In any given situation with 14,000 pages of documents assembled over a period of 18 months to two years, it is not unlikely, and indeed most probable, that several of your most treasured documents will be lost given the "typical" filing system and multiple users. By using an imaging program, you have your documents scanned either "in house" or by a "service bureau". Once the documents have been scanned, you can't lose them, no matter how hard you try. If you lose the CD, a couple of bucks for a copy puts you in business again.

Not only is the "retention" safeguard important, but with so many documents in issue, having the ability to "call up" a document in a matter of moments and be able to read it was a tremendous advantage during all phases of the case.

## RETRIEVAL OF DESIRED DOCUMENTS IS EXTRAORDINARILY QUICK

How many times have you known that there is a document or two that would "Win the argument" or "solve the issue", but you just can't seem to get

your hands on that particular document. The beauty of the database system is that once you review the document and have it coded, the document is capable of instant recall and capable of viewing or printing. In the heat of battle, who has time to "diddle"? In discovery during a deposition or in Court during cross-examination, the ability to pull up a document for immediate review can be of extraordinary importance.

But even during trial preparation, and often times during litigation, clients believe that a certain set of facts are "thus and so", while the attorney handling the case has a different conclusion. I can tell you that I settled many an argument between myself and my clients by quickly retrieving the questioned document, or documents in issue and displaying them on a computer monitor for all to see.

You don't have to use Trial Director in court in order to enjoy its benefits. I have found first-hand that document retrieval enhances the preparation of the case itself. For example, you can carry the case with you in your laptop and annotate exhibits or make whenever you are in arms reach of your laptop. When it comes to the preparation of trial exhibit books, in addition to the benefits of the projection aspects, the procedure is enhanced because of the orderly nature inherent in the use of the program.

For example, in my own litigation, midway through the discovery of those 14,000 documents, the defendants and counter-claimants sought to waive a jury. My clients consented to this waiver, as this was an extremely "technical" case and probably the right decision. Nevertheless, it dramatically changed the way we used Trial Director.

Here is how I used Trial Director and Summation after the jury waive:

1) Trial Director accentuated an organized thought process to occur resulting in the preparation of trial books which were, in many instances, excerpted documents, printed from the scanned image.

2) I prepared a Power Point opening statement importing the images burned in the CD rom database.

During trial, certain selected documents were retrieved from Summation and Trial Director and reproduced in the courtroom and used for cross-examination "on the fly".

In conclusion, I think you will find that if you use a database program such as Summation and a presentation program such as Trial Director, you will be able to organize, maintain, search, review, annotate and, thus, control your case far more effectively than the way you did it "in the old days." With the use of tools like Summation and Trial Director, perhaps you too will be able to "remember everything".