

**LEVERAGING TECHNOLOGY IN LITIGATION,
MEDIATION AND TRIAL**

JAVIER HERRERA, *San Antonio*
The Herrera Law Firm, Inc.

State Bar of Texas
**SOAKING UP SOME CLE:
A SOUTH TEXAS LITIGATION COURSE**
May 17-18, 2018
South Padre Island

CHAPTER 18

Javier Herrera is the youngest son to the firm's founder, Frank Herrera, Jr.

Javier graduated from Boston College in 2000 with a Bachelor of Arts in Psychology. In 2007 he graduated from the University of Chicago-School of Social Services Administration focusing on community development, organizing and planning. Javier returned to San Antonio to attend his father's alma mater, St. Mary's University School of Law graduating in 2010, where he was a member of the Board of Advocates, the St. Mary's Mock Trial Team, the Hispanic Law Student Association, and worked two years serving clients in the St. Mary's Center for Legal and Social Justice, where he served in both the Civil and Criminal Clinics fighting for the rights of those who could not afford attorneys.

He currently serves as one of the American Association for Justice Minority Caucus Board of Governors, the VP of Finance for the San Antonio Trial Lawyers Association, member of the Texas Trial Lawyers Association. He has served as the President of the Mexican American Bar Association for San Antonio, the VP of CLE for the San Antonio Trial Lawyers Association, the VP of CLE for the San Antonio Trial Lawyers Association, member to the Hispanic Law Alumni Board and Law Board of Visitors for St. Mary's University School of Law, and member of the San Antonio Young Lawyers Association.

Javier's passion for justice and equality is not only his own but of his entire family. He was taught that no matter where you go in life to never forget where you come from, and that "winning isn't luck, it's knowing how to fight". He along with his father and brother continue serving clients from the barrios or the board rooms that all persons deserve justice.

Licensed to Practice:

- Supreme Court of the United States
- US District Court Western District of Texas
- US District Court Eastern District of Texas
- US District Court Northern District of Texas
- US District Court Southern District of Texas
- Texas

Papers and Topics:

- Use of Technology in the Courtroom
- The Digital Lawyer: There's an App for That
- The Digital Lawyer: Using Technology from the Office to the Courtroom
- Prepping for Mediation
- Mediation in the Modern Era
- Trying It Smarter, Faster, and Cheaper!
- Doing it Right and on a Budget

TABLE OF CONTENTS

I. IT’S NOT THE OLD DAYS ANYMORE 1

II. I LOVE GOOGLE 1

III. SOMETIMES YOU HAVE TO GET CREATIVE 1

IV. THERE IS AN APP FOR THAT 1

V. FINAL THOUGHTS..... 2

LEVERAGING TECHNOLOGY IN LITIGATION, MEDIATION AND TRIAL

I. IT'S NOT THE OLD DAYS ANYMORE

A couple of years ago, my father and I tried another simple car wreck, and I wanted to come up with even simpler ways to try it. I am certain many of you have experienced what I have encountered which is that sometimes you have to take the small car wreck case to trial. You know the case with a minimal policy, and had a minor impact with soft tissue damages. So you're left with a choice, try the case or take a terrible offer, because you're reading this paper, I'm assuming you're going to try the case, well done. Now the fun part begins, how do you tell your client's story without breaking the bank on case costs and expenses? Hopefully this paper will give you some ideas on how to find sources and resources of potential demonstratives and exhibits that are useful and most importantly cost effective.

II. I LOVE GOOGLE

It's simple, when you need to order late night Chinese food while you're preparing for trial, go to Google; when you need a quick and inexpensive demonstrative/exhibit, go to Google. Quick note, every venue is different, many judges are different, so I assume that you can prove up whatever you found to get it admitted into evidence or that your judge has granted your use of the demonstrative or you have had a witness prove up what you are trying to use from Google. As you begin the demonstrative search process, look at your Rules of Evidence to begin forming your arguments as to why whatever you downloaded/printed should be admitted or why the demonstrative should be published to the jury.

As I meet with a new car wreck client, and way before I ever take the defendant's deposition, I "Google" the location of the accident and discuss with the client the "Google Map" location and ask my client the following questions: (1) are you familiar with the area; (2) how they are familiar with the area; (3) if they recognize the area from Google Map; and (4) if the Google Map scene is a "fair, accurate, true, and correct" depiction of the scene at the relevant time of the accident. If it's the same then you're ready to use the same image when you're crossing the defendant. If your client says the image is not the same as it was at the relevant time of the accident, then you have to find out what is different and what is the same?

When you're ready to depose the defendant, print out the map (in color) or download the image to a tablet device, or laptop as a jpeg, or PDF, or as an .html link so you can interact with it on your laptop during the deposition. As a practice tip, if there is a street view available for the particular street scene I try to use the

street scene view as that gives you a first person view point of what the defendant/plaintiff would have seen at the time of the accident. This is especially helpful if the defendant says they couldn't see your client! And if you are an Apple user, download the Google Earth app, and have fun zooming in and out of the scene. *Please note all product recommendations is due to my personal use and not an advertisement or promotion of a particular brand over another (although I wish I did receive some type of compensation!).

III. SOMETIMES YOU HAVE TO GET CREATIVE

Sometimes you have to work faster and smarter because you need more than just a Google Map to obtain the necessary compensation for your client. I have found when you need an animation, a great source is of course vendors that work with different associations I'm a part of, but if the cost is too high for a small car wreck, the next best resource for a basic but very helpful demonstrative, is the treating physician. Many of our treating physicians and different medical experts used by both Plaintiffs and Defendants have websites, and in their website look for videos explaining the procedure that was done on your client, or that they propose should be done on your client, and if your expert doesn't have a video look to accredited organizations within your experts and see if they have videos, most do. The videos are usually very instructional and informative since they are used to educate potential patients, and others in their fields, so why not use them to educate potential jurors.

IV. THERE IS AN APP FOR THAT

The Ipad is a great tool that can be used for more than just watching movies or getting your small children to stay quiet. The TrialPad, Docupad, and TranscriptPad apps suite is great, and definitely will save your back and arms when going to a deposition or to trial. For a car wreck case, I use Google Earth app to review the scene with my clients as well as with the Defendant. If you have a many clients we use a software called TrialWorks for case management and document management which helps with keeping cases moving and to keep track of what has been produced by the parties.

TrialPad is an easy and effective way to present your trial and for depositions. It's a great app to present your smaller and simpler cases. It's also great for depositions (remember that Google Map) because you can annotate pictures, digitally mark them as exhibits, and if you have a wireless printer, print them wirelessly and attach them to the deposition.

The medical app, created by 3D4Medical, is a medical teaching app, which has great digital models that many treating physician currently use in their private practices to explain injuries to their patients. If you can use the app in your expert's deposition then that is a powerful demonstrative to show the jury what

happened to your client, just remember to disclose the app prior to their deposition so you can avoid early on any issues with these demonstratives. This app is easy to learn and use, and effective when paired with your doctor during their deposition.

For mediations, *voir dire*, opening, and closing PowerPoint is a great way to put together your cases, as well as a way to organize your thoughts and case story in a simple and efficient way. *I normally use PDF's as the way to show the documents in PowerPoint and take a snapshot of the specific area I want zoomed in on in PowerPoint.

V. FINAL THOUGHTS

- 1.) Get creative on your demonstratives, in this age of technology, your imagination is the only thing preventing you from a new demonstrative. Seriously try Googling what you would like to show, it's out there.
- 2.) Look for demonstratives that your jury can relate to, just think, if you have any teenagers in your house that drive, in two short years they could be on your jury, what kind of world have they experienced everyday of their lives? You need demonstratives that they can relate to and experience.
- 3.) Work with opposing counsel to pre-mark and pre-admit your key evidence and demonstratives. If you can do this, then you can use the evidence whenever you want.
- 4.) Figure out a budget early on, and decide where you must spend a little more to get a great demonstrative and where you have to rely on your imagination.
- 5.) Keep your exhibits/demonstratives simple, and remember the old saying KISS – keep is simple stupid, the easier they are to understand, the easier it is for a jury to understand your story.