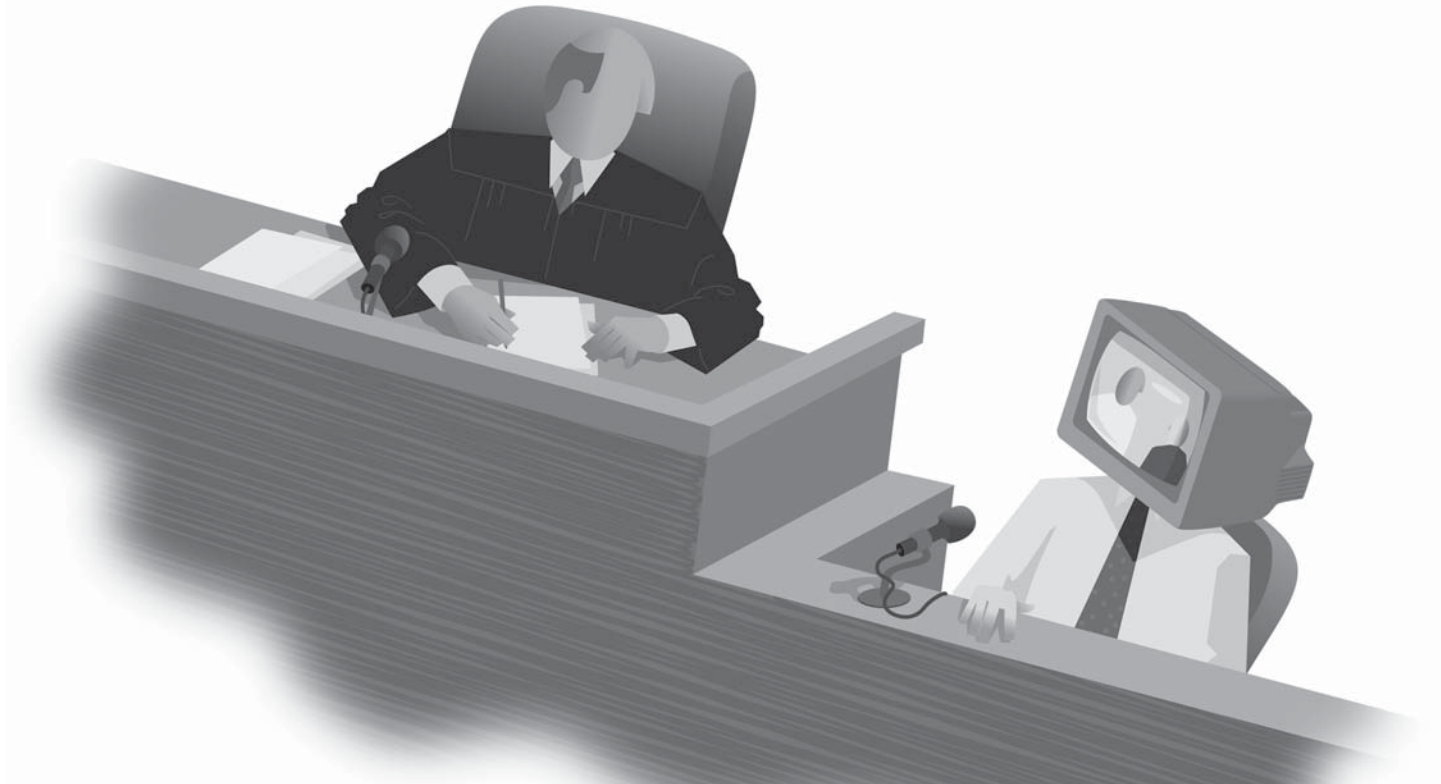


## How-To



# How to videotape lay witnesses for “Day in the Life” videos

## Preparing and shooting for the edit

by Alan Michaelis

A “Day in the Life” video can provide a powerful way of presenting the damages of your case at a mediation or as part of a settlement brochure. The object of the video is to encourage settlement and provide enough information to validate the settlement amount you are seeking. This is your opportunity to show the adjuster how your lay witnesses will appear on the stand and how convincing they will be to a jury. Additionally, the video will humanize your case and put real faces on the witnesses before trial. Preparing for and shooting the video are the first two parts of the process. They lay the important foundation for the third part, editing the production. Shooting for the final edit will produce the best results in the least amount of time and at the least cost.

Your video editor, who often is not behind the camera during the shoot, has the responsibility to take all of the material you

provide and build a short, compelling story to support the value of your case. Most professional editors can work magic even with bad material, but that can be inefficient, costly, time consuming and seldom produces the best results. So lay a good foundation!

### Getting started: The Interview

**Location, Location, location.** Most lay witnesses will be more comfortable if they are videotaped in their home or a family member’s home rather than a law office conference room. Arrange for this with the family so they will have time to prepare their home. Gather many witnesses in the same location but isolate them from the interviews. If you don’t you will get answers like “as my brother just said” or you might get five witnesses with identical answers. Additionally you may get extraneous responses from off camera witnesses.

**Dress your witnesses for success.** Ask your witnesses to dress for the interview the same way you would want them to appear

for the trial. Since the shots will be taken mid-chest and up, suggest to ladies that they not wear low cut tops that could possibly expose too much. Avoid “busy” print shirts and blouses. Solid and somewhat muted colors work well. Keep in mind that the videographer will need a to attach a microphone and need some way to hide the wire. Shirts and blouses with buttons and jackets work best.

Ladies should wear some makeup. It doesn’t have to be a lot but remember these are close up shots and everyone who watches these videos has seen a lifetime of beautiful people on television. One caution, however: avoid makeup under the eyes especially if you expect the witness to get emotional or cry. Black mascara running down a face is very distracting. Men should shave unless they have a beard, and have a neat haircut. Keep the “common sense” jury instruction in mind when suggesting their appearance. If you get to the interview and their appearance is unflattering, try to get them to change even if they have to borrow something.

**Personal memorabilia.** Several days before videotaping, ask the lay witnesses to collect family photographs and memorabilia about the injured person or decedent. During the interview, let them hold the photos towards the camera and talk about their memories related to that photo or object. Take all of the photos used during the video with you after the shoot. The video editor will need to re-shoot them in the studio. Most likely, they will be dubbed in, providing a better and more steady view of the photos. Let the on-site videographer know the photos will be re-shot so that he is not zooming in and out on the witness during the shoot.

**Home movies.** If the family has home movies before the injury or death of the plaintiff, ask to borrow them. It is very labor intensive for an editor to go through home movies to find a few seconds of perfect video to cut in, but it is well worth the time and effort. Sometimes you will even find the decedent waving to the camera. That makes a powerful video clip, especially in slow motion when a spouse is taking about how much she misses her husband or child. A closeup of a warm smile or holding her young deceased daughter at Christmas can be very emotional. It doesn’t take a lot of footage to make a powerful statement.

**Additional materials.** When your witness is talking about the shock and trauma of a collision, use police photos of the crash, TV news clips, aerial photos of the site, medical illustrations (without labels or lines) and even x-rays of broken bones or CT images of soft tissue injuries. Keep an open mind and eye for any evidence that your editor could use. Creative editing converts an interview into a documentary.

**Three parts to the interview.** A personal injury or wrongful death case interview will have three parts – life before the injury, events at the time of

injury and life after the injury or death. Prepare your questions in that format and let the witnesses know that you will be asking about those general topics. During the edit, the videographer will group all the statements from the various witnesses into those three categories. As an example, when you shoot, witness A will talk about before, during and after the injury or death, next witness B will do the same. The videographer will edit the tape so that witnesses A, B, C, etc will be talking about life before the injury, followed by A, B, C events during the injury and finally A, B, C describing life after the injury.

**Prepare and ask open ended questions.** Remind the witnesses that they need to provide complete, stand alone answers because the questions will likely be cut from the edited video. Make sure they pause between the question and their answer. This will give the editor space to cut out your question without cutting part of the answer. In some cases you may have to re-ask a question if the witness fumbles on an answer. In other cases you may have to give the witness some guidance, especially at the beginning of the interview. Your instructions will be edited out.

**Little Stories.** Very short stories about life experiences with the decedent can be priceless. People relate to stories. Question: I see you have a baseball cap there. Tell me about that cap. Scene: a daughter holding a baseball cap that her deceased dad gave her. Story: “I’m a Philly’s fan and Dad was a Yankee’s fan. After each Yankee’s game I would call him and rag on him about how many mistakes the New York players made and he would do the same to me after a Philly’s game. I miss those calls.”

**Introductions.** Ask each witness to introduce themselves at the beginning of their video and state their relationship to the plaintiff. In most cases, the video editor will cut their introduction out and replace it with a name and relationship title in their opening scene. Example of a title: Sarah Baker, Daughter.

**How long should the edited video be?** Less is more. The biggest variable is the number of people interviewed. You will probably shoot 10 to 20 minutes with each witness. If four witnesses have a total of five minutes each in the *edited* version to tell their stories, you will have a 20-minute final video. Don’t over-do it with repetitive video clips that draw out the final version. Make your point and move on.

### Sample Questions

Before you start, position yourself to one side of the camera, so far that the witness doesn’t tend to look at you. It will be easier for them to look at the camera and ignore you if you are not close to the camera.

Try not to interrupt or make comments during

the answer. Ask the witness to simply remain silent when he has finished his answer. He doesn't need to say, "That's all I can say about that." The silence will be your cue to ask the next question and it will give your editor cutting room between the Q&As.

Give your witness the following instructions:

1. Look at the camera as if you were talking to the guy running the camera. Don't look over at me.
2. I am going to ask some questions. Please take a second or two before you answer. We are going to cut out my questions from the video and the guy doing that needs a slight pause between the questions and answers.
3. Please answer your questions in complete sentences because we will be removing the questions for the final version. You can't simply answer yes or no. If I ask you your name, you should answer, "My name is Carol Michaelis and Alan is my husband."
4. Don't worry if you make a mistake, we can re-tape any answer. Relax. Be as natural as you can. I know this isn't easy. Pretend like you just met a new friend and you are telling him about your loved one. Witnesses may begin to cry or become very emotional at the beginning of the taping. Calm them down. There is a place for deep emotions later in the shoot but not at the beginning.

The following are a few questions from a wrongful death interview conducted by James C. Lewis with *Hajek, Shapiro, Cooper Lewis & Appleton*, in Virginia Beach. The names have been changed for this article, but this series of questions show one way to conduct an interview. In this case, Carol is the wife of decedent Alan.

- Carol, please give us your full name, age and your relationship to the Alan.
- How long were you married and how many children do you have?
- How did you and Alan meet?
- Tell me a little bit about your courtship.
- When and where were you married?
- How long were you married to Alan? Make sure you get a complete answer "I was married to Alan for 32 years" not "32 years."

You may have to remind your witness several times during the interview to answer in complete sentences.

- I see you have some pictures from your wedding and your early life together. Would you please hold up the pictures so the camera man can see them and tell me about each one?  
Note: before the shoot you should select the pictures you want to use in the interview and place them in a stack near the witness in the order you want her to discuss them.
- Now moving to more recent times, tell me

about the things Alan liked to do around the house.

- Tell me about his career. Where did he work, what did he do and how long did he work.
- Here are some more photographs. Tell us about the things Alan liked to do when he wasn't at work or working around the house. (Usually hobbies, travel, holidays, family events, etc.).
- Tell me about some of the things you and Alan enjoyed doing together.
- Carol, I'm going to ask you some difficult questions now but I won't drag it out. Are you ready?
- Tell me about the last time you saw your husband.
- How did you hear about Alan's car crash?
- What did you do next?
- What happened at the hospital?
- When did you hear that Alan didn't make it?
- Tell me a little bit about the funeral.
- Tell me what your life is like now without Alan.
- What do you miss most about Alan?
- When do you miss him the most?
- If you could see Alan just one more time, what would you say to him?

After this interview, the four children were interviewed in a similar fashion and asked to talk about growing up around the house with their dad, what they remembered most about him (little stories), events that happened (How they learned??) when their father was killed and what they missed most about him. They were also asked how his death has impacted their mother.

### **The videographer and your responsibilities**

Before the shoot, let the videographer know that they will be taping an interview and not a deposition. Set the taping for the witness' home and send a copy of this guide so they are prepared.

**Date-Time Stamp.** Although the date-time stamp is required in depositions, it is not for these videos. Be sure the videographer turns off this feature so editing will be seamless.

**Audio.** Use a lapel microphone on the witness for the best sound quality. Hide the microphone's wire beneath the witness's clothing. Note how microphone wires are hidden on TV. Because depositions are set up quickly, most videographers don't have time to hide the microphone wire so they show up as a distraction in the video. Most legal videographers just clip on the microphone and start shooting. Remind them to hide the wire or they may forget.

You should not have a microphone on. The witnesses' microphone will quietly pick up your questions. This will minimize unwanted sounds such as your breathing, coughing, paper shuffling or extraneous comments that could conflict with your witnesses' answers.

**Lighting.** Ask the videographer to bring additional lighting. Most homes have insufficient overhead lighting for videotaping. This causes shadows around the eyes or hides the eyes completely on dark skinned witnesses. Position the light about 30 degrees to the side and 30 degrees down. If possible, bounce the light off of a photo umbrella. This will give the witness some eye sparkle and capture the glister of tears. If the witness is wearing glasses, make sure her eyes are not blocked by reflected light. To eliminate reflections, move the light, change her position, remove her glasses or tilt them down slightly. Beware of photo sensitive glasses that darken when exposed to light. Have the witness remove them to avoid the witnesses eyes gradually disappearing.

**Noises.** Listen for background noises. Eliminate them or move the shooting location to a different part of the house. You can turn off a noisy refrigerator or air conditioner long enough for the interview. Barking dogs are a particular problem. (You could bring several pounds of medium rare cooked steak to the shoot to quiet the dogs. And if there aren't any barking dogs, the videographer will appreciate the good lunch!) Ask the videographer to let you listen to the background sound in his headphones. (If he is not using headphones you have the wrong person shooting the video.) Turn off all house phones and everyone's cell phones. If there is intermittent noise, such as a passing truck or jet you will have to stop the interview until the noise passes. Just repeat the question; the editor will cut out the interrupted answer. Let the videographer know that it is her responsibility to interrupt the shoot if she hears distracting noises in her headphones. She will be more aware of these noise than you.

**Camera angle.** The camera *must* be on a tripod. Be sure the height of the camera is aligned with the witnesses' face. Do not look down on or up at your subject. Interviews on TV are good examples of straight-on camera angles.

**The setting.** Select a warm comfortable setting; something that looks homey without a cluttered background. You want the witness to stand out from the background. After the videographer is set up and has his shot framed, look in his viewfinder or monitor to view the scene and approve it. If possible, vary the background for each witness.

### **A Strategic Decision**

Videotaping an interview with your injured client to show during a mediation is a strategic decision. Your client may be very shy or timid and find it difficult to discuss her injuries, deformities, sexual

abuses or limitations in front of a group of suits sitting around a big mahogany table. We view mediations as informal compared to trials but to our clients they are formal and intimidating. The adjuster needs to hear them tell how the injury has impacted their life, but clients often are terrified of speaking in public. Videotaping your clients in the comfort of their own home where mistakes can be edited and answers restated can accomplish the objective of having the adjuster see them speak. One word of caution, do not send the client's tape with a demand package. If the mediation is not successful, you do not want the defense to be able to cross examine the plaintiff on the stand with the tape. In addition, the unedited tape may be discoverable. Only use a client video at mediation where the confidentiality agreement protects it.

### **Conclusion**

There are many preliminary details involved in shooting a "Day in the Life" video before the footage ever gets to the editor. As in every effort, preparation and attention to details are the building blocks of success. If you provide your editor with great footage, he will be able to quickly and efficiently craft a compelling story for your mediation.

Quality is never an accident. It is always the result of high intention, sincere effort, intelligent direction and skillful execution; it represents the wise choice of many alternatives.

*Source unknown.*

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## Videotaping Lay Witnesses for “Day in the Life” Videos Preparing and Shooting for the Edit Checklist

Action	Witness 1	Witness 2	Witness 3	Witness 4	Witness 5
<b>Before the shoot:</b>					
Select lay witnesses					
Select location					
Advance notice to homeowner of shoot					
Advance location notice to witnesses					
Advise witnesses how to dress					
Ask witnesses to bring photos, memorabilia, home videos to the shoot					
Collect evidence such as police photos, TV news clips, x-rays.					
Write your questions in the before, during and after event sequence.					
Advise videographer (V) of home rather than office location.					
Advise V this is interview not a deposition					
Advise V to bring supplemental lighting					
Send a copy of this guide to the V.					
<b>At the shoot:</b>					
Select a warm, homey, uncluttered setting					
Sort, organize photos and memorabilia in the order you will use them					
<b>Begin the interview:</b>					
Advise V to turn off Date-time stamp on camera					
Advise V to hide microphone wire					
Check sound in headphones, picture framing in monitor and camera height					
Sit off to the side of the camera					
<b>Instruct your witnesses as follows:</b>					
Look at the camera, not you					
Pause briefly before and after answering each question					
Give complete, stand alone answers					
Don't worry about mistakes					
Pretend like you are talking to a new friend					
Try to act natural					
Encourage them to tell short stories					
When you ask about a photo, remind them to hold it up to the camera					
<b>After the shoot:</b>					
Collect all photos and memorabilia used during the interview. Collect other materials the editor might use and bring them home with you. Keep photos in the order they appeared in video.					
Advise the V to set the record lock on his tapes					
Advise the V to send the original camera tapes to the editor after he makes backup copies					
List witnesses and their relationship to injured or deceased party in the order they were filmed below:					