

PRESIDENT'S MESSAGE

April Wentz, U.S. Trustees Office Legal Clerk

The Madison Area Paralegal Association will be celebrating our **20th Anniversary this year**. Look for interesting events throughout the year to commemorate the founding of this organization. Our organization is growing and changing. We encourage all of you to get involved in a committee and take advantage of all that MAPA has to offer. The following committee chairs are looking for participants:

Barb Morin, Website
Mignon Coyne, Treasurer
Patti Mackesey, Membership
Tiffany Pelanek, NALA, Student Membership
Karen McKenzie, Education & Newsletter
Deb Ferrel, Mentoring
Public Relations is looking for a **chairperson**

MEMBERSHIP COMMITTEE

Patti Mackesey, Boardman & Clark

Membership is up over last year, much due to the success of the annual meeting. Please note that if you are referring someone for membership that the new application will have a check box for committee or committees of interest in participating in.



NEW 'APP' FOR MARKING EXHIBITS

*Sherrie Wirth, M.B.A. President & Art Director
The Exhibit Company*

The Exhibit Company was formed in 1995 in Austin, Texas. (continued on page 8)...

JANUARY 2012 EDITION

TRIALS & TRIAL PREPARATION

TABLE OF CONTENTS

PRESIDENT'S MESSAGE	1
EDUCATION COMMITTEE UPDATE	1
MEMBERSHIP COMMITTEE UPDATE	1
INTERVIEW WITH AN EXPERIENCED TRIAL LAWYER.....	2
DANE COUNTY LEGAL RESOURCE CENTER A RESOURCE AT TRIAL	5
NEW APPLICATION FOR ELECTRONICALLY MARKING EXHIBITS	8
NEWSLETTER EDITOR UPDATE	8

EDUCATION COMMITTEE

Karen McKenzie, Winner, Wixson & Pernitz, LLC

Thank you to the members of the committee for their involvement last year. We have also welcomed new members in the last two weeks.

The calendar has been set for the Lunch & Learns for 2012. Look for them to be consistently on the third Wednesday of the following months: **March 21, May 16, August 15, October 17, and December 19**. Please mark your calendars in advance! Location: Hilton, downtown.

Upcoming Events:

Lunch & Learn Date: 3/21/2012

Topic: **Appeals Process & Procedure**

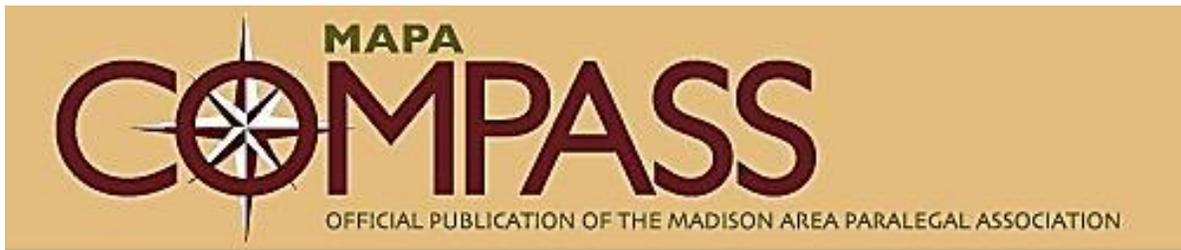
Speakers:

Kate Harrell-McKnight, Attorney, Winner, Wixson & Pernitz; Process;

Sherrie Lindgren, Paralegal, Bell, Moore & Richter: Reference Tools and Charts;

Roberta "Bobbi" Bushey, Deputy Clerk of District II; Top 10 Reasons an Appeal is Rejected; and

Diane Fremgen, the new Clerk of the Supreme Court and Court of Appeals, *effective* March 5, 2012: Question & Answer.



Look for your invitation to RSVP in your email by next week. Please send ideas, questions, comments to: kmckenzie@wwplaw.net

**INTERVIEW WITH AN
EXPERIENCED TRIAL
ATTORNEY**

Karen McKenzie- Winner, Wixson & Pernitz, LLC

The topic of this month's newsletter is trials and trial preparation. I know one attorney who has more than 30 years-worth of experience at trial; he also happens to be an excellent attorney. Since I work for him, I figured it would be difficult for him to turn down the interview. He agreed, as long as he didn't have to type.

KM: Attorney (Scott) Pernitz thank you for agreeing to be interviewed.

SP: Well, your questions had some mixed metaphors. Apart from that, I'll answer your questions, as best that I can. (I had emailed him questions in advance, as is my standard practice. Attorney Pernitz critiqued my writing style).

KM: Our website states that you went to the UW Madison for law school. What it doesn't say is that you were actually clerking at Winner & Wixson at the same time, were you not? Is it true you started out here by delivering the mail?

SP: I am not sure what you are trying to ask me. Yes. I started here as a law clerk. Back then Law Clerks did everything from delivering the mail to pleadings and service of process. We didn't have paralegals then. We had two to three secretaries. I started here in February of 1978. I was in my second semester of the first year of law school. At that time, it was common place to work at a firm while in law school and then to work at that firm throughout your whole career. These days, it would be unusual to have practiced at only one firm.

You emailed me while I was in Africa

KM: Law practices have changed in the past 34 years since you graduated. What are some of the biggest changes in the practice of law that you have noticed?

SP: Modernization and technology. People email, text, and even email documents from their phones now. It builds the expectation of *immediate* responses. In the past we would receive a letter from the opposing attorney. It would reach my desk that day or the next business day. Then I would read it. Then I would dictate a response. That would be transcribed. The response might go out in two business days. However, with technology of today, the client now expects 24/7 access and response time. The demands are that much higher now because you are always connected. As you know, you emailed me regarding cases while I was on vacation in Africa.

RE-TYPE the whole brief

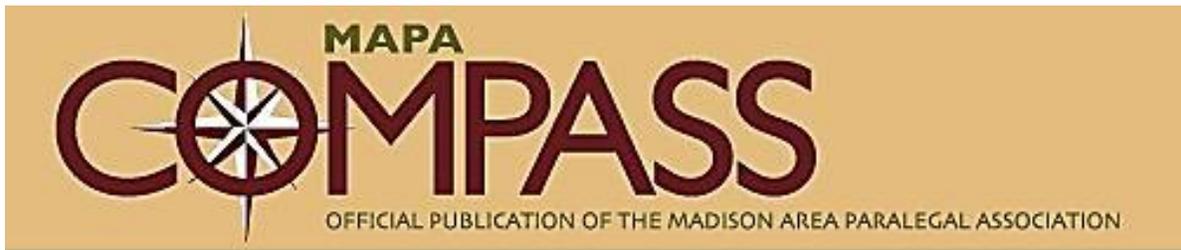
SP: When I started, a brief was typed out on a typewriter with a carbon paper for the copy. If one were to make even a single change to that brief, the entire thing would have to be *re-typed*. Imagine that. We went to "Mag Cards," then to dedicated word processors. We had PCs that could only handle 20 mega-byte of hard drive. Now, my phone has 160 megabytes of memory.

KM: You have worked in a firm from the ground up. What do you see as the largest challenges to law firms these days?

SP: The biggest challenge, right now, is the economy. The recession affects firms and it affects clients. Our clients are the insurance industry, so they expect more from us with even less, because they have greater financial constraints placed on them.

Daubert

KM: Recently, there has been a lot of discussion about adopting the Federal Rules of Evidence, most notably the Daubert Rules for expert



witnesses. Do you think that these changes will impact our practice and trial preparation? If so, how?

SP: The new Daubert standards will make very little difference in our practice. Our expert witnesses are treating medical doctors, vocational specialists and accident reconstruction engineers. They are not on the fringe of the scientific community. 'Daubert' is meant to weed out people who are the fringe of science that come up with theories that have no scientific basis. We would continue to use the 'admissibility test'.

'The whole file in a brief case'

KM: What are the most significant changes in trials and trial preparation that you have noticed throughout your career?

SP: Well, in the 1980's, when you went to court you could take the whole file in your brief case. Now you have to use a dolly. This is because the number of experts has increased, case files are bigger, more records are ordered and exchanged through discovery, then add to this that each side is using 2-3 experts of their own. Finally, with discovery depositions of each expert, this results in a larger case file.

Sole practitioners disappear

SP: Another change is the law firms in small towns. We used to deal with more one lawyer firms, in small towns. It seems as though more of the larger cases are being taken by bigger firms that advertise and are consolidated and have offices all over the state. The firm of the sole practitioner is disappearing. You don't see the "Jack McManus's" around anymore.

KM: Are you referring to the lawyer who used to practice out of that lovely building that is now owned by Attorney William Haus?

SP: Yes. It was originally a mortuary. It's kind of ironic, right? Right now, I heard that Mr. McManus is now running a gold mine.

KM: Literally? **SP:** Yes, literally. **KM:** Smart guy. **SP:** In Alaska.

KM: Getting back to the 'file in a brief case,' why weren't as many depositions taken in the 1980's? People still had the same types of injuries and cases, why all the production?

SP: Well, there are a couple of factors here. First, technology has improved. There weren't MRIs then. A person had an x-ray and either had a fracture or didn't. Second, there are new treatments for pain that didn't exist back then such as steroid injections, radio frequency nerve ablation, acupuncture and botox injections. In 1980 you might have had a plaintiff with two treating physicians. Whereas, now, for the same soft tissue injury, they might have 20 treating physicians many of which could be designated as expert witnesses.

Service list two pages long

KM: Our cases that go to trial seem to have multiple parties, up to 10 or even 12 parties for one event. Has this always been true? If not, what accounts for this phenomenon?

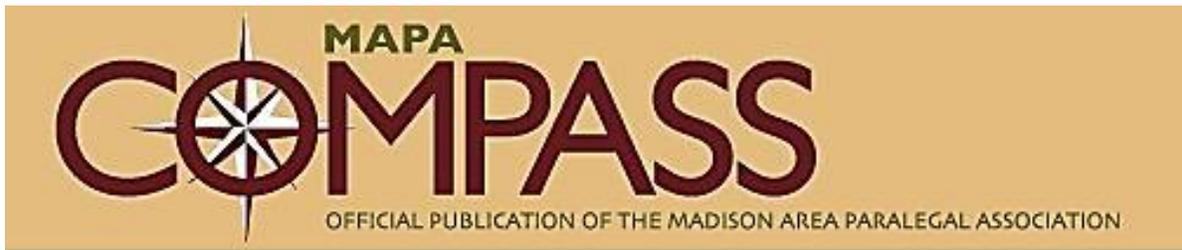
SP: A couple of factors impact the number of parties. Since we have an insurance defense practice, we handle many different types of claims. Our construction cases often have multiple parties and are very complex. Like the one we worked on.

KM: That case that had a service list that was two pages long?

SP: Right. We are seeing more construction cases than we had in the 1980's. Last year we went to trial with that case with more than 50 boxes. You helped organize the exhibits in that case; they filled our whole conference room. In addition, these complex cases are then appealed. That case you are referring to has been going for over six years.

KM: Is that the longest active case you've had?

SP: No. I seem to remember a case in 1980 that



went to the Court of Appeals twice. I think it finished in eight years.

SP: Another issue that affects trials is mediation. Mediation is utilized a great deal now. It drastically reduced the number of cases that go to trial. Cases that go to trial tend to be the multiple party, complex, high dollar amount medical cases, or complex construction cases with multiple parties that failed to resolve or simply can't be resolved through mediation.

KM: You have tried quite a few cases in your career. You always tell me that you "erase all the information" after the trial is done. However, which cases, in your recollection, were the most challenging to prepare for and why?

SP: Those complex cases that either went on forever; or the \$15 million dollar cases, with the 50 boxes, were memorable. I don't keep notes on all of them.

KM: How many cases have you taken to trial?

SP: Oh, I don't know. More than 150 jury trials. Let me think. I know that I lost a few. I remember two in particular. But you have to define lose. If someone is asking for \$750,000 and the jury awards them \$15,000, I would consider that a win as a defense attorney.

Little Red Book

KM: You mean you don't have it written down somewhere, special verdicts, zero liability, and damage amounts? How many have you won? I'm surprised you don't know your batting average? (He then searches around his office and pulls out a small red book that was owned by his predecessor.)

SP: This book goes back to when I was first out of law school. One year out of law school I had my first oral arguments in front of the Wisconsin Supreme Court, in a bad faith case. (He is reading the notes on the cases and types.) This also contains legal research on specific topics.

KM: Is that similar to a judicial bench book?

SP: Yes, in a way. Now you research online.

I handled 55 appeals between 1980 and 1999 and 100 jury trials.

KM: So, you could calculate your batting average? **SP:** Yes, it would be pretty high.

KM: I'm impressed.

SP: Well, we also compiled these statistics to be board certified as a trial lawyer. Back in the 1990's it was a big deal. We had to submit all the numbers on how many cases, how many were they the lead attorney, the number of days at trial, cross-examination, closing arguments and the like. (He shows me the form). Then, because the plaintiff attorneys had it, the insurance companies asked us to get the certification.

KM: Do people still submit for this? I noticed that it is on our letter head, for you and Attorney Mundt.

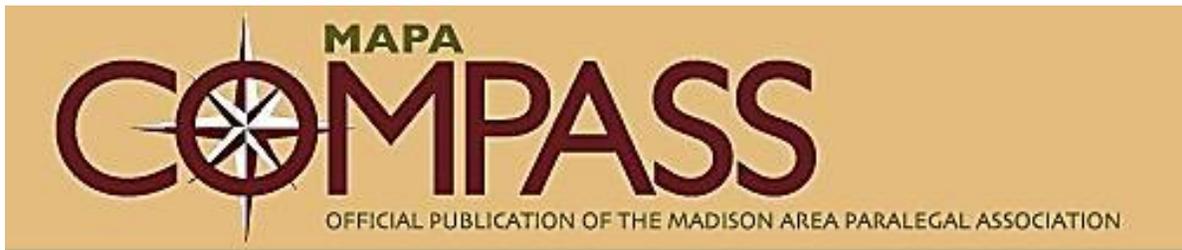
SP: No, well, it is getting harder and harder to achieve (the certification). So many fewer cases are going to trial that it is hard to get the experience necessary for the distinction. It would be very hard for a new attorney to ever achieve this.

KM: Regarding trials, has technology assisted in trial prep or do you see technology as a tool that is secondary to analysis and strategy?

SP: Yes and No. Technology makes it easier to organize exhibits and presentations like power point.

KM: But you didn't use any power point with the trial I assisted you in.

SP: Right. Sometimes people can get carried away with it and overwhelm the jury. It is important to know when to use it and when not to. We made the timeline visual for closing as a large exhibit using printouts of a power point. I think that was very effective. I have seen it fail, or they couldn't get it to run. At those times they should always be prepared to go "old school" and tell the story.



KM: I noticed that you always prepare a trial notebook, as they also teach paralegals to do.

SP: That trial notebook? I've been doing that for years. It helps me know the file and the case backwards and forwards.

Respond to a Text at 2am

KM: Any advice for paralegals who want to work for a trial lawyer?

SP: It knows the file, all the documents, every exhibit, and every person. They should also know every party: where they are, every expert, every witness and their cell phone number. All of these people should have interacted with the paralegal, and likewise. So that if something goes wrong, like the trial is going faster than anticipated, for instance, and our expert is going to be expected to testify on Wednesday, instead of Friday, the paralegal can get the expert ready. It's more than getting people to and from court and taking notes. Or, if, at 2am, it suddenly occurs to our client, on the morning that she is about to testify, that she wants a translator, our client should be able to text message the paralegal. A paralegal should respond to that 2am text. Then, that paralegal should find a translator by 9am, that day, even if the client may be from, I don't know, let's say, from Cameroon. Sound familiar?

KM: Thank you, Scott.

INTERVIEW WITH DANE COUNTY LEGAL RESOURCE CENTER, LISA WINKLER

Karen McKenzie, Paralegal at Winner, Wixson & Pernitz, LLC

KM: Lisa, first of all, thank you for consenting to be interviewed. You are the lead librarian at the Dane County Legal Resource Center, located in the Dane County Courthouse, Rm L1007. How long have you been doing this, and what

type of schooling/ education did you have to prepare you for this position?

LW: I have been the Reference/Outreach Services Librarian since June 07. Prior to that, I was the Library Associate for two years. The main educational credential is a Master's Degree in Information and Library Studies which I earned in 2009 from UW-Madison.

Mission

KM: What is the stated purpose of the law library / Dane County Legal Recourse Center?

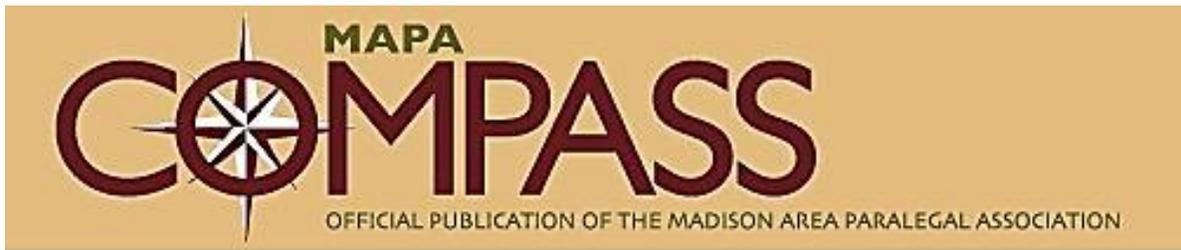
LW: We share the same mission statement as the Wisconsin State Law Library, which is to serve the legal information needs of the officers and employees of this state, attorneys and the public by providing the highest quality of professional expertise in the selection, maintenance and use of materials, information and technology in order to facilitate equal access to the law. In essence, we are here to make sure the legal information we provide to patrons is not only the best available, but is also accessible to everyone.

KM: How many people's questions do you field in a week? Or how about in a day?

LW: On average, we field questions from eight to 10 people an hour, roughly 60 people a day, and about 300 a week. We tend to be busiest when the legal assistance clinics are open because so many *pro se*, or self-represented, litigants need the Legal Resource Center. In addition to the patrons that visit the library, we must also answer phone calls and reply to emails, neither of which was included in the above estimate. In order to keep up with this demand, my Library Associate Bob Lopez and I have learned the efficiency of multi-tasking which has helped keep the Resource Center running smoothly.

References

KM: You have a lot of references here, both for attorneys and lay people alike. What kinds of



people use your library? Do you also see District Attorneys and law program students?

LW: The Legal Resource Center is open to the public and we are available to serve all Dane County residents involved in circuit court proceedings. Self-represented parties tend to be our most frequent visitors followed closely by local attorneys and other area legal professionals, such as paralegals. District Attorneys use our collection and we see law school students who run some of our legal assistance clinics or just want a place to study. We also assist the judges of Dane County through reference services as well as the more traditional library function of keeping their judicial chamber collections up to date. Not only do judges use the Legal Resource Center, but we get members of their court staff as well as county employees. Finally, we provide a one-way legal information service to the inmates in the Dane County Jail. As you can see, really we try to have the resources on hand to meet the needs of a wide range of patrons.

KM: Part of the mission here is to make the legal system accessible for those who cannot afford to hire an attorney. What types of programs are in place for people who cannot afford an attorney?

LW: We have several clinics that meet regularly in the Courthouse and brochures to help people find them. First, Legal Resource Center has a free version of the Low-Cost Legal Assistance in Dane County document; available at <http://wilawlibrary.gov/topics/countylinks/dclegalassist.pdf> This publication lists agencies, organizations or clinics that provide low or free legal assistance to our community. Second, there are four clinics that operate right in the Dane County Courthouse on a weekly basis: The Family Court Clinic (FCC), Family Law Assistance Center (FLAC), Restraining Order Clinic and the growing Small Claims Assistance

Program (SCAP), which I help coordinate and keep their materials current. Third, people can go to the Foreclosure Answer Clinic, located in the City County Building. A current schedule of all the clinics' hours can be found online at <http://countyofdane.com/court/prepare/assistance.aspx>

Due Process

KM: Some people might think that it is a misuse of resources, but isn't it also true that when pro se litigants are better informed about procedure, it makes the trial process easier for everyone involved- even for the other party who may be represented by counsel? Why do you think that is?

LW: The Legal Resource Center is an incredibly valuable self-help center. We make the most of every resource we have. We provide people with information on the court procedures they need to follow and connect them with the volunteers at the legal assistance clinics who can explain these procedures to them. The more information people have at their disposal, the better their understanding of the processes taking place and the more smoothly court activity unfolds. As a law librarian, I fully support the right of all people to have access to information regardless of their social or economic status. But access to legal information is only half of the equation. Pro se litigants often have a difficult time *understanding* what they are reading, and there is a real need for more assistance clinics to help them fully digest what they have read.

Professional Resources

KM: I often see attorneys looking up a case before they file a motion in court upstairs. Do you have resources here that a person cannot find on Westlaw for example?

LW: We offer several resources that are not available in Westlaw, although the Resource Center has Public Access Westlaw on two public



computers. We have nearly a complete collection of the Wisconsin State Bar CLE (brown binder) books as well as Books UnBound, the State Bar's database. Book UnBound allows patrons to access all the CLE books electronically, run keyword searches, or word process forms from pre-loaded MS Word documents. Also, we offer current sets of the Criminal, Civil and Children's Jury Instructions, complete Administrative Code, statutes back to 1859, and session laws that date back to a time before Wisconsin was even a state. Two other legal databases, Hein Online and Legal Trac, are legal databases available on our public computers thanks to Wisconsin State Law Library

KM: What are some other benefits of registering with the Library for a library card?

LW: We follow the same policy for issuing library cards as the WI State Law Library. Like the Law Library; a card from our Resource Center gives you borrowing privileges from the main State branch as well as our two county branches (Dane and Milwaukee). Resources can be requested and returned to any of the libraries. More than that, some library card holders have remote access to Hein Online and Legal Trac, as well as being able to receive email alerts for new library items in specific subject areas. Besides, did I mention it's free? You can access the library card application online at: <http://wilawlibrary.gov/services/borrowmaterials.html>

Copy Service

KM: I heard that you have a copy service here. Can you tell me about that? It sure would come in handy if you have a case at trial.

LW: We currently have the only public photocopier in the Courthouse and charge \$.25 per page (tax included) for copies or printouts from the computers. We have a public fax machine and charge \$.75 per page for incoming or outgoing documents. We offer a document

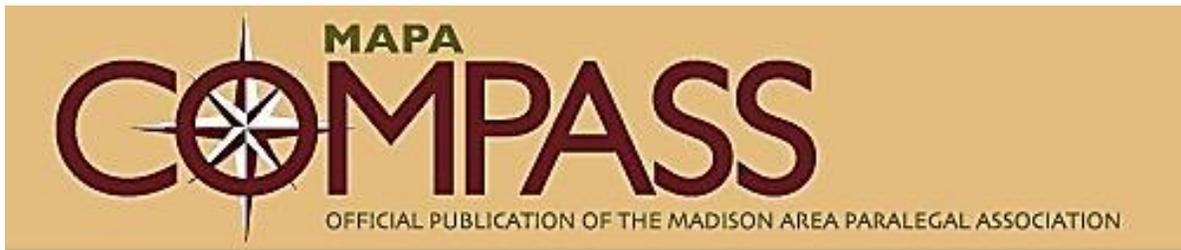
delivery service. For a fee, we will send materials not freely available online. For pricing, contact me or see our fee schedule at: <http://wilawlibrary.gov/services/fees.html>

KM: I think a big improvement would be the addition of an espresso bar in the library. But you guys are planning something different. What do you have up your sleeve in the future for the library?

LW: I honestly think 2012 is going to be a big year for the Legal Resource Center. This year, I hope to revitalize our print collection, which has suffered in recent years due to budget cuts. In particular, I would like to increase our special collections, such as the Dane County Drug Court Collection, Local Decision Access Project, and Dane County OWI Court Collection. These are important because they involve programs coming out of our very own Dane County court system. Through blossoming relationships with the Dane County Bar Association and other community institutions, I hope to hone our collection to support the court staff, legal professionals and litigants involved in these initiatives.

KM: Is there anything that you would like to talk about or add that we haven't discussed today?

LW: In my time here at the Legal Resource Center, I have come to appreciate just how profoundly law and court proceedings can impact our lives. Studies have shown that public library use increases in times of economic hardship, and the Legal Resource Center is no exception. Despite shrinking budgets and rising costs for legal publications, we strive to ensure continued public access to the best legal resources available. If you've never come to this library, please visit. If you would like to show your support and volunteer some of your time to help us out, please contact me. Even a seemingly small gesture can have a



tremendous effect on someone who needs it. There is no time like today to lend a helping hand. Thank you, Karen, for your time and support of the Legal Resource Center.

New App (Continued from page 1)

The business started back in the days of huge poster boards and no electronics in the courtroom. As the financial manager for an environmental engineering firm, I used to our engineers out with presentation materials to “pitch” city councils across the country. I developed a graphics team and the equipment to produce large format presentations in-house. The Exhibit Company started when I helped a friend with demonstratives for her small case. She won her case and within the week, the managing partner for her firm called and asked for help preparing demonstratives for his upcoming trial. After the start of that trial, the head of litigation for the largest firm in Austin and the co-defendant for the current case called and asked if I could help with demonstratives, too. That started a lifelong passion for communicating messages and concepts to juries in the most persuasive way possible. My team and I started to study everything we could get our hands on dealing with information graphics, jury psychology and general advertising principles. To date, we have been fortunate enough to participate in over \$750 million in plaintiff recovery verdicts and at least that amount in defense savings. We really take pride in being able to adapt to the latest in technology and software.

About Our Two New Ventures

We started to notice a shift in the needs of our clients over the last several years, due to the economic climate. Many of our clients are being asked to outsource less but still maintain a high level of quality when it comes to demonstratives and utilizing technology in the courtroom. More and more frequently we have been asked to train

our clients to do what we do. In addition, we have developed the first professional digital exhibit sticker to work with Adobe Acrobat PDF files. We are very excited about both of these new ventures. The next few pages explain a bit about our new ventures.

Background:

Over our 17 years in the visual consulting business, we have worked shoulder to shoulder with our clients as they meet discovery and trial deadlines. We have seen clients who have been asked to do the impossible...sticker, scan and deliver an electronic file to the court within minutes. We have had other clients suffer embarrassment by “messy” hand written exhibit stickers. The final straw for us was when we had a colleague tell us that she was going to have to print out over 2,000 documents, hand sticker the first page of each and every document, and then pay to have the documents re-scanned. The total bill was going to be well over \$3,000 for the entire process. We thought there had to be a better way and set about finding an electronic exhibit sticker that would solve her problems. Well, hours later, we discovered that there were a few immature attempts at E-stickers on the market but no professional way to do what she needed. Thus, **ExhibitSticker.com** was created. In a few weeks, we are launching the first ever electronic exhibit sticker that works with Adobe Acrobat PDF files. Our beta testers are raving about the product and are telling us it is saving them time and costs by not having to manually sticker/scan/ re-print their electronic files. Plus it just looks so much more professional and super easy to use. **ExhibitSticker.com site on February 15, 2012.**

NEWSLETTER UPDATE

Karen McKenzie, Winner, Wixson & Pernitz

This newsletter has been on **Trials & Trial**

Preparation. Comments, questions, or if you would like to be interviewed please email me at kmckenzie@wwplaw.net