Never (See) Your Case the Same Way Again: The Uses of Technology in the Courtroom

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Althought the use of technology in the courtroom is not a new concept, attorneys are often uncomfortable with the thought of using technology at trial. One reason for this apprehension is the lack of knowledge of what is actually considered technology. Technology in the courtroom is considered anything that is displayed electronically. That is to say, anything that is shown on a monitor or screen is using technology. The fact is, even the use of a document camera in court, better known as an “Elmo,” is using technology.

It is important to remember that jurors live in a world of TV, local news, CNN, USA Today, advertising, People magazine. In meetings and classrooms, key information is highlighted for them, and visual organization is used to communicate both simple and complex ideas. When jurors enter a courtroom, the visual stimulation that they are accustomed to receiving in the outside world disappears, and they are left to plow through a mass of orally delivered, artificially-sequenced information.

Nothing advances jurors’ understanding and retention of information more than strategically designed visual organization of information. And in fact, an awareness of a corporate client’s revenues may actually increase their expectations of well-presented information. So a decision to forego to technology because it is too “expensive” may prove very costly indeed.

Once you’ve decided to utilize courtroom technology, there are a variety of tools to consider. Some of the most common forms of courtroom technology are outlined below:

**ELMO & VCR**

The use of a document camera or “Elmo” is the most basic use of technology seen in courtrooms everywhere. Countless courtrooms today come equipped with a document camera, VCR and monitor for use by counsel. The downside to using to using this type of technology is the time it takes to set up documents and the inability to edit videos “on the fly.”

**E-GRAPHICS**

One of the benefits of using E-graphics in addition to static boards is the increased visual stimulation of onscreen graphics.

**Static E-graphics**

PhotoShop, Illustrator or InDesign are some of the software products used to create static E-Graphics, which offer the flexibility of making last minute revisions. There is further flexibility in the presentation modes, since e-graphics can be re-arranged, re-worded, added or deleted moments before being shown in court.

**PowerPoint Presentations**

A very common use of technology in trial is PowerPoint. Exhibit boards can become cumbersome when there are too many. In the time it takes to find a board, a juror’s mind may have wandered on to something else causing you to completely lose the impact of your argument. PowerPoint offers the same “on the fly” flexibility for changes as e-graphics.

**Interactive Timelines**

When developing graphic timelines, you run the risk of necessitating a large number of print graphics, especially when the material you are working with happens to have an overwhelming surplus of dates. Interactive timelines, which can be created through programs like Flash and Director, offer the chance for jurors to be walked through a process step-by-step, even blowing out key events, documents, or crucial dates. It doesn’t create an information overload, and actually allows jurors to retain the information much better.

**Animations**

The amazing, ever-growing technology of CGI has added a very realistic dimension to courtroom
presentations. Programs such as Lightwave can be used to develop very lifelike re-creations of events and places. Another great capability is that 3D renders can be built in “layers”, and offer the chance to peer inside the inner workings of everything from an atom molecule to a boiler plant. This is a fun departure from the 2D static exhibits, and really allows you to spice your presentation up.

TRIAL PRESENTATION SOFTWARE

TrialDirector and Sanction are the two most widely used forms of “Trial Presentation Software” available. Documents and video depositions are best presented through one of these forms of software which allow documents to be highlighted, blown-up and compared to one another easily. Likewise, use of this software enables jurors to see, hear and read depositions simultaneously, thus assuring full impact of the statements made in a deposition.

Proprietary Software

TrialMax and TrialPro are two examples of proprietary trial presentation software used by litigation consultants. A downside to using proprietary software is the incompatibility with other software programs.

COURTROOM TECHNOLOGY CONSULTANTS

Attorneys and consultants spend a great deal of time and resources designing persuasive, compelling graphics. As technology evolves and becomes a more acceptable and desirable means of presenting demonstratives, the final presentation of the graphics becomes a more technical issue. When using one of the higher levels of technology such as TrialDirector or Sanction, it is a wise idea to consider using a Courtroom Technology Consultant. Although many law firms have “in-house” technology consultants who are skilled in PowerPoint or TrialDirector, they are often not skilled in the art of combining all these tools to create a seamless presentation. Using a professional courtroom technician rather than an in-house technical services person in your high-stakes case is worth the added cost because he or she brings the following attributes:

1. Knowledge of many programs and platforms

Most in-house technicians are skilled in individual programs such as TrialDirector, Summation or Concordance, which are all powerful programs and each play an important role in presenting an argument. However, most in-house technicians are not skilled in the higher-level use of graphics programs and are often uncomfortable using multiple programs simultaneously.

2. Experience in multiple venues and settings with many attorneys

Technicians who are in court every week have many opportunities to observe what works well for a jury and what does not. Seasoned courtroom technology consultants often work in front of the same judge in multiple cases and become familiar with the judge’s preferences as well as the courtroom’s technological capacity.

3. An understanding of and appreciation for informational design

The Courtroom Technology Consultants we employ view the evidence from the juror’s perspective as opposed to a technical perspective. DQ graphics consultants work with the courtroom consultant to explain the messages that must be conveyed so the consultant becomes the in-court extension of the graphics consultant.
Practice Tip

**Using Storytelling Techniques to Craft a Persuasive Legal Story**

By Lee Diamondstein

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**TIP**

In your opening argument, tell your story with graphics to demonstrate some key themes, if the judge permits; then revisit the same demonstratives in your closing argument.

Think about the last time that you went to the movies. You probably sat through five or six previews of upcoming features, each approximately two minutes in length and comprised of brief sound bursts. Despite their abbreviated nature, by the end of the preview you undoubtedly had formed an opinion about the movie. You probably had a pretty good idea about the movie’s story line, yet you viewed only about two minutes of the film. How does this happen? Well, the anticipated “story” you formulated was based on experiences with that particular genre, producer, and actors, as well as familiarity with similar story lines.

In the same way, jurors begin to develop a story about the entire case based on the previews given in the opening statement. Jurors fill out the story using their own experiences, attitudes, and perceptions as a framework. As in the movie example, jurors fill in the gray areas in the dispute at hand and “connect the dots” based on related experiences and their overall views of the world. Jurors then selectively filter information presented to them to maintain a coherent story. While the story is elaborated upon throughout the trial, there is a strong tendency for jurors to discard information inconsistent with the main story line.

Psychologists Reid Hastie and Steven Penrod were the first to note the use of a story as a cognitive device by jurors trying to make sense of the case and remember key elements. Behavioral scientists practicing as trial consultants have long advised trial lawyers to take advantage of this phenomenon in shaping their opening statements. A key element of this technique is the identification and use of themes. Hastie and Penrod noted that historical narratives were more effective than issue-oriented
presentations in helping jurors recall discreet elements of the case presentations. Multiday trial simulations, post-trial juror interviews, and shadow jury studies have confirmed that jurors begin to formulate their story about the case very early on in the process.

Some of the most influential people throughout history have been great storytellers. Storytelling is the most effective technique to communicate information in a persuasive manner. Why are the best storytellers able to persuade their audiences with little effort? It is because they deliver moving stories that evoke a strong emotional response in their audiences. Similarly, some of the top trial lawyers are highly adept at communicating with a jury through narrative. Although a trial is a real-life drama, the use of storytelling techniques is really no different from their use in a Hollywood film or a best-selling novel.

There are several principles that trial attorneys can use to improve their ability to tell an effective story: understand how jurors listen, develop persuasive themes, and present the case as a narrative.

**How Jurors Listen**

Jurors are ordinary persons torn away from their daily routines and placed in an unfamiliar and highly ritualized environment. They are asked to make profound decisions—guilty or not guilty, a plaintiff or defense verdict, large or no damages, or life imprisonment versus the death penalty. After they have been instructed in complex legal terminology, they are asked to determine which of two conflicting versions of the facts is correct. So what do jurors do? How do they make sense of the conflicting information presented at a trial?

Years of study of jury behavior have shown that, from an information processing standpoint, all jurors do similar things regardless of the issues in the case, the lawyers, or the venue or jurisdiction. Each juror strives to make sense of the conflicting information by formulating a story that explains the situation in familiar terms. The “juror story” about the case is the picture of the case the juror will remember long after the trial is completed. It is the narrative “self talk” that the juror will use to explain the conflict in familiar terms. This “juror story” is the essence or heart of the story, reduced to the three or four key messages or themes that define the case from the juror’s perspective. As the storyteller, the trial lawyer can affect how a juror describes the case and defines his or her story.

Why do humans use the story form to organize information and make sense of conflicting data? The human mind has little tolerance for discrepant and ambiguous information. Our natural tendency is to organize information into meaningful structures. Story structure is unique in that it allows us to sort out human affairs and can incorporate almost any kind of information. While a trial attorney can choose a variety of ways to organize the issues and facts in a case, the average person would attempt to organize case elements using a story.

Why is storytelling an appealing way to persuade an audience? Storytelling appeals because it nurtures whole-brain learning. A story has elements that appeal to both sides of the brain. Cognitive psychologists have long known that the right brain, with its artistic and creative side, responds to the thematic and aesthetic story concepts that evoke emotions, while the left brain is satisfied by the temporal and organizational structure in a story. A good trial story should contain both thematic appeal and a narrative structure.
Storytelling is an essential element of persuasion not only because of its explanatory power, but also because it allows jurors to transcend the case and place themselves in the case scenario. Therein lies the rub; the structure of a trial is inconsistent with how jurors listen. The traditional trial structure is one that calls for inductive information processing. That is, the lawyer presents fact one plus fact two plus fact three, perhaps through a series of witnesses. The presumption is that at the end of the day the jurors will assimilate the information and reach the desired conclusion. This is simply not how jurors listen. Jurors listen deductively, developing a story that explains the conflict early in the trial process and then filtering the evidence selectively to maintain a consistent picture. The trial lawyer must tell a complete story—which includes compelling themes, a specific narrative structure, and narrative elements—in the opening statement if he or she is to get jurors to form a favorable story of the case.

**Themes**

What are themes? They are not facts, legal definitions, or cute sayings. They are abstractions, concepts that help jurors define “the case story.” The relationship between a trial story and its themes is akin to the relationship between a folk tale and the moral messages it illustrates. Themes are the three to four aspects of the case that jurors will retain after the trial’s completion. Themes also allow jurors to reach conclusions about the parties’ respective motives. Themes are an important part of the story because they promote unity, tying the characters in the case together and creating consistency between the plot and subplot. They are the organizing principles or touchstones of the case story.

Themes have an important additional function, serving as significant cues in the later stages of the trial when jurors’ attentions wane and they begin to fade in and out during important witness testimony or the closing arguments. In the same way that the exit sign or familiar landmark brings a daydreaming driver back into focus, themes serve as sign posts reminding the jurors that it is time to “plug back in” and listen because important information is forthcoming.

In developing a legal case story, themes must be clear before you write the story. A good theme has five identifiable characteristics:

- It is user-friendly and has broad appeal to most audiences.
- It evokes an emotional response in the listener.
- It is compatible with other themes.
- It can be described in one sentence.
- It is one of a relatively small number of themes in the story, ideally between three and five.

One of the most satisfying experiences a trial advocate can have is to hear a juror explain the verdict using a theme provided by that attorney. For instance, in a business case brought by a new and upstart entrepreneurial company against one of its suppliers, the defense argued that the plaintiffs had only themselves to blame because they outgrew the ability of their supplier to keep up. A juror explained the defense verdict by utilizing the defense team’s key theme and organizing principle during the trial, “The plaintiff got too big too fast.”

How do you develop persuasive themes for your legal story? You can’t go to the law library and find a catalog of persuasive themes, nor can you locate them on the Internet. It is also difficult to look at the file and determine what the themes should be because themes are both case specific and audience spe-
specific. Consider the contrast between a jury drawn from a small rural venue in the south and a panel from a northeast metropolitan jurisdiction. Not only would these two audiences differ significantly demographically, but the members likely have very different experiences and views of the world based on the different cultural milieu operating in their respective locations. Consequently, the way they view the case will be different. The interaction between the audience and legal/factual scenarios must be understood in order to develop persuasive themes for the legal story. The best way to develop this understanding is through pretrial surrogate jury research (e.g., focus groups, summary mock trials) in the jurisdiction where the case will be tried. Let the mock jurors tell you what the story is in your case, and be ready for surprises.

**Persuasive Narrative**
Dissecting good stories to identify what makes them persuasive shows that all have three structural components. Regardless of the type of story—an Edgar Allan Poe classic, the latest Hollywood blockbuster, a soap opera, a multipart Broadway play, or a trial covered by Court TV—it will have the following substantive and structural elements:

- Establishing shot;
- Development stage; and
- Resolution of conflict stage.

The establishing or opening shot is the first several minutes of the story. In a legal story, it is the first two to three minutes of the opening statement. It is where atmosphere is created, posture is established, and perspective is defined. It establishes the “climate” in which the story will be told and is arguably the most critical component because it affects the way jurors will perceive the rest of the story.

During the development stage of trial, lawyers present the facts of the case. In the opening statement, facts are typically related to the jury in the form of a narrative of what the witnesses will say. Because the witnesses will be restricted to a question-answer format and will not be allowed to tell stories, the lawyer must weave the key witness messages into the story structure. Despite these restrictions, witnesses should be used to reinforce key themes or "home base" messages consistent with the overall case story.

Research shows that jurors create their stories by finding and matching five basic elements:

- Act (what was done);
- Actor or agent (who did it);
- Means (how it was done);
- Purpose/motive (why); and
- Context (what were the circumstances).
In a successful presentation, all five elements must be accounted for and compatible with each other. If the story is not provided to the jurors, they will undoubtedly try to construct their own. If that happens, the lawyers have little or no control over the story and, consequently, over the outcome of the case. However, all too often the lawyers fail to provide the jurors with the complete set of elements, or provide them with elements that are not consistent with each other.

The element most often missing is motive. Even if the law does not require a showing of motive, jurors are always looking for it, and if they do not find it, the story falls apart. Therefore, lawyers will be well advised to follow the jurors’ logic, rather than trying to steer them toward accepting the legal rule.

Another common mistake involves a mismatch between the elements. Lawyers often reason that the more negative information they present about the other side, the better off their side will be. However, in a narrative, adding negatives does not always enhance persuasion. Referring to the five story elements noted above, jurors are looking for unity and consistency: whether this kind of agent under the given circumstances is likely to have this kind of motive and perform this kind of act using this kind of means.

A good example of a mismatch is a civil case where the plaintiff’s attorneys described a defendant as an utterly irresponsible, reckless, long-time polluter, who never did anything right. The plaintiff’s lawyers hoped that the jurors would hate the defendant and award the plaintiff a large sum of money. Instead, the jurors began to wonder about the responsibilities of other parties: “If things were so bad, why didn’t the government do something? Why didn’t the plaintiff take actions earlier?” The more they wondered, the more responsibility was lifted from the defendant and placed on other parties. In this case, the plaintiff’s lawyers’ presentation of the defendant as the agent did not match the presentation of the context (society, government, and the people in whose midst the defendant was operating). One solution available to the plaintiff in this case was to accept some of the defendant’s representations about its attempts to stop pollution and present them as the defendant’s way of diverting the attention of the government and the plaintiff, who were deceived by these seemingly good faith efforts.

The five story elements can serve as a checklist to be used throughout the trial preparation. Through the use of the list, thousands of pages of discovery materials can be reduced to a simple short story—which is what the jurors will do during the trial. Using this list, the strong and weak parts of the case can be evaluated from the jurors’ perspective, and a decision can be made as to what additional evidence is needed to strengthen the story. While it is tempting to present the evidence along a timeline, the realization that some aspects of the story are stronger than others may dictate an alternative presentation—the element that opens the story will affect the jurors’ perceptions of the rest of the evidence.

The third structural element is the conflict resolution phase during which the jurors are told that the story is not yet finished and are urged to reach a conclusion. A key ingredient of every good story—whether a narrative, film, or trial—is conflict. Without conflict, there is no story. There are no plots or subplots, no characters that rally to a solution, and no resolution or happy ending. In effective stories, the plea for desired outcome is delivered with a key message that engenders an emotional response from the audience. The goal is to leave the jurors “feeling good” about the way you want them to resolve the conflict. This is probably the most difficult aspect of a story to deliver for defense.
lawyers, who often must counter the prosecution or plaintiff’s plea to resolve a conflict and restore justice, which typically involves awarding significant damages to a plaintiff in a civil suit or convicting a defendant in a criminal case. The defense must create an equally appealing role for the jury. Whenever possible, a verdict of “not guilty” or zero damages should be presented as an affirmative assertion of the defense story rather than a defensive counter to the plaintiff’s or prosecution’s story.

The final structural element of a story is the coda or ending, which is really a subsection of conflict resolution. It is important in persuasive communication because it lets the audience know the resolution is some desirable state. This section also provides a loop back to the themes presented initially in the establishing shot.

**Conclusion**

The effective use of themes, narrative structure, and the elements of a good story has the potential to elevate the advocate’s case in the minds of jurors. A presentation that follows this structure is more interesting and holds jurors’ attention, enabling jurors to remember key facts and arguments. Themes are like the RNA molecules that replicate the key points and arguments throughout the trial. They tie everything together throughout the long disjointed life of the trial. The effective advocate can organize the evidence and show the truth of his or her story by closing with the themes and story line jurors have lived and experienced for the days and weeks of the trial. Of course, here is the real key: The story must be consistent with the presentation of the case facts and be the better representation of the facts in the critical judgments of jurors.

Storytelling is an important tool in trial advocacy, but not the goal of trial advocacy or a short cut to a favorable decision. Like any tool of trial advocacy, the skilled practitioner can use the elements of an effective narrative to give his or her client an edge. That is reason enough to develop the skill of storytelling.

**Note**

The Solo & Small Firm, Technology for the Litigator and Trial Practice Committees present:

**Effective Trial Presentation:**
How to Use Technology Efficiently and with Proficiency

Lee Diamondstein, Esq.
Your Honor,

I am tired of spending day after day wasting my time listening to this bullcrap. This is cruel and unusual punishment. The Plaintiff is an idiot. He has no case. Why are we here? I think my cat could better answer these questions.
And he wouldn’t keep asking to see a document. I’ve been patient. I’ve sat in these chairs for 7 days now. If I believed for a second this was going to end on Thursday I might not go crazy.
This is going to last for another 4 weeks. I cannot take this. I hate these lawyers and prayed one would die so the case would end. I shouldn’t be on this jury. I want to die. I don’t want to be thanked for my patience. I want to die!! Well not die for real but that is how I feel sitting here.
I am the judge, you’ve said that over and over, well I am not fair and balanced. I hate the Plaintiff. His ignorance is driving me crazy. I know I’m writing this in vain but I have to do something.... For my sanity. These jury chairs should come with a straight jacket.
An entire day today and we are still on the same witness, the Defense hasn’t even started yet and we have 3 days left, 3 days my ass. Not that the Defense needs a turn considering the Plaintiff and his lawyer (who looks like The Penguin) have no case!!!!
Thanks for letting me get this off my chest. Please keep the disorderlies nearby, I may need them.

Juror #5
R. Buten
Will I Appear Too Slick If I Use Technology?

What jurors see and use everyday:
Too slick?  Gen Y
## Weiss-McGrath study—Retention & Recall

<table>
<thead>
<tr>
<th></th>
<th>After 3 Hours</th>
<th>After 3 Days</th>
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</thead>
<tbody>
<tr>
<td>Oral Presentation</td>
<td>70%</td>
<td>10%</td>
</tr>
<tr>
<td>Visual Presentation</td>
<td>72%</td>
<td>20%</td>
</tr>
<tr>
<td>Both Oral &amp; Visual Presentation</td>
<td>85%</td>
<td>65%</td>
</tr>
</tbody>
</table>
Take-Aways

- Recall & retention
- Slickness factor
- Jurors expectations
- Better ways of presenting
- Social Media
- Contamination by Technology
Jury service: Easy Stuff
“[M]ore important than the words”
CSI-effect
5. Does anyone here watch forensic crime scene television shows, such as CSI, Law and Order, Without a Trace, NCIS, etc.?
6. If so, does anyone believe that the forensic techniques used in those programs are a true and accurate depiction of the techniques used in real police crime labs today?
9. Will you be able to put aside any preexisting expectations or outside standards you have learned from fictitious television programs, and decide this case only according to established Arizona law as the judge will explain it to you?
David v. Goliath
Jolly Green Giant v. The Little Guy
Too Many Visuals?
"Pictures more helpful"
Juror Expectations
More seasoned . . .
And judges . . . (Barbara Jacobs Rothstein)
Prejudicial for Big Companies?
Video Tape Deps
Impeachment clips: “No doubt in your mind that they said it”
Set Drama / Low tech: video clips
Ineffective Demonstratives

• Very “busy”
• Convey too much information
• Obscure the message they are trying to deliver
• Off-putting
Ineffective Demonstratives
“When we understand that slide, well have won the war” Gen. Stanley A. McChrystal (4/26/2010 NYT)
Effective graphic (closing)

L’s Distortions

[Graph showing data points and bars for various parameters]
Get the Expert off of the Stand
Technology Crashing
Prepare, prepare, prepare

- Spec the courtroom
- Early courtroom visit
- Dry run
- Arrive early
When Is It Good To Mix Media?

- For a long trial
- To emphasize a particular piece of evidence
- To use repeatedly during trial
- To accommodate comfort level of lawyer/witness
Boards
Leave the board up for the jury
Mark Your Demonstratives As Exhibits
Different Price Points
Examples of How Visuals Add Value
Four Key Charts (you shouldn’t do without)
Org / Player chart
# Key Players

## ISLAND CRUISE
(Plaintiff)

- **S. Cody Engle**
  - Chairman of the Board and CEO
- **Bill Binnie**
  - Vice President, Development; Project Manager for S.S. Independence Renovation
- **Tom Carman**
  - Vice President, Marine Operations; Naval Architect; Head of Marine Work for S.S. Independence
- **Debra Contreras**
  - Employee, Head of Hotel Work for S.S. Independence
- **R. E. White**
  - Vice President, Marine
- **William Richards**
  - Employee, Assistant to Vice President, Marine Operations
- **Rick Koch**
  - Steel Superintendent
- **Randy Burns**
  - Employee, Project Engineer
- **Joe Martino**
  - Employee, Hotel Side
- **Bob Slanker**
  - Hotel Consultant
- **Joe Meredith**
  - Scheduling Consultant

## SHIPCO
(Defendant)

- **Bob Leber**
  - Director of Ship Repair and Conversion
- **Rick Neilson**
  - Engineering Manager for Commercial Engineering
- **Rick Spaulding**
  - Construction Superintendent for S.S. Independence
- **Dewey Stinson**
  - Manager of Marketing, Ship Repair
- **Al Conley**
  - Project Engineer, Commercial Engineering
- **Ron Ward**
  - Director, Cost Estimating
- **Sam Hudgins**
  - General Foreman, Shipfitters
- **Mike Sneed**
  - Cost Estimator
- **Jussi Alanko**
  - Cruise Ship Conversion Consultant

## OTHERS

- **Lt. Studebaker**
  - United States Coast Guard (USCG)
- **Neil Cain**
  - HOPEMAN BROTHERS (Hotel Subcontractor) Project Manager
- **Gary Haberman**
  - M. ROSENBLATT & SONS (Naval Architectural Firm) Consulting Engineer
- **Charles Hughes**
  - ABS (Ships Classification Society) Surveyor
- **Mike Challoner**
  - MAIN INDUSTRIES (Painting Subcontractor) President
- **Rex Luzar**
  - WACO (Asbestos Abatement Subcontractor) President
Board of Directors

John Greeniaus
Forrest Haselton
Berdon Lawrence

James Pate
James Postl
Terry Savage

General Brent Scowcroft
Gerald B. Smith
Lorne R. Waxlax
Effective Graphics

Before

A BOARD OF DIRECTORS HAS THE RESPONSIBILITY TO PROTECT NUMEROUS INTERESTS

BOARD OF DIRECTORS:

• Employees
• Creditors
• IRS/Payroll Taxes
• State Sales Tax
• Vendors
• Unions
• Employment Commission
• Shareholders
A board of directors has the responsibility to protect numerous interests.
Four Key Charts (you shouldn’t do without)
Key Themes

- TransNational represented that the property would qualify
- TransNational promised to indemnify us
- SodaCo relied on TransNational’s promises
- TransNational reneged on the contract
Did RCI Breach the November 12th Contract?

14.0 SAFETY AND LOSS PREVENTION

14.1 The Contractor shall be responsible for the safety and industrial hygiene of its employees while engaged in the Work.

14.1.1 It is the responsibility of the Contractor to advise the Company Representative of any conditions or activities that are considered a safety hazard or problem that requires control by the Company.

14.2 The Contractor shall be responsible for an ongoing safety and loss prevention program during the performance of the Work.

14.2.1 As a minimum, the safety program shall require compliance with Occupational Safety and Health Act of 1970 (OSHA) as amended and all regulations and standards adopted and/or promulgated thereunder or in connection therewith.

14.4 Work shall be performed in accordance with recognized safe practices of the industry. When Work is to be performed in areas of existing Company facilities, Contractor shall adhere to and enforce all safety and loss prevention rules or conditions of the Company during performance of the Work hereunder. Noncompliance with the safety requirements set forth herein shall be considered by the Company to be grounds for termination of the "Work".

14.2.4 The Contractor shall indoctrinate each and every employee to the contractor's Safety Program prior to starting Work and monitor the work of its employees to ensure proper job safety.

14.2.3 All Work performed must also comply with all applicable codes, laws and ordinances.

BREACHED

BREACHED

BREACHED

BREACHED
Four Key Charts
(you shouldn’t do without)

- Key Players
- Key Themes
- Timelines
Timelines
Effective Graphics

Before

DATES AND RESIDENCES OF SAM JOHNSON (AND HIS FAMILY)

May 20, 1975
Sam Johnson, born in Texas (El Paso)

November 7, 1982
Returned to Texas (Austin)

November 1, 1982
Moved to Germany (Munich)

October 9, 1982
Moved to Israel (Haifa)

*October 8, 1982*
SEIZURE (Istanbul)

July 4, 1982
Family moved to Turkey (Istanbul)

Effective Graphics – Taking the client’s idea and implementing it strategically
Four Key Charts (you shouldn’t do without)

- Key Players
- Key Themes
- Timelines
- What Was Said
- Then/Now
Hindsight bias: what did the defendants really know?
Prior Art Technology

Smith's Drawing
Prior Art Technology

Smith’s

“grasping plate”

“holder”
The Honorable Gil Freeman’s Jury Instructions
What are the rules?

Finally, before we begin the trial, I want to give you just a brief explanation of rules you must follow as the case proceeds.

Keeping an Open Mind: You must pay close attention to the testimony and other evidence as it comes into the trial. However, you must avoid forming any final opinion or telling anyone else your views on the case until you begin your deliberations. This rule requires you to keep an open mind until you have heard all of the evidence and is designed to prevent you from influencing how your fellow jurors think until they have heard all of the evidence and had an opportunity to form their own opinions. The time and place for coming to your final opinions is during your deliberations, not after the evidence has been presented.

Consider Only the Evidence: It is the things you hear and see in this courtroom that matter in this trial. The law tells us that a juror can consider only the testimony and other evidence that all the other jurors have also heard and seen in the presence of the judge and the lawyers. Doing anything else is wrong and is against the law. That means that you must not do any work or investigation of your own about the case. You must not obtain on your own any information about the case or about anyone involved in the case, from any source whatsoever. This includes reading newspapers, watching television or using a computer, cell phone, the Internet, any electronic device, or any other means at all, to get information related to this case or the people and places involved in this case. This applies whether you are in the courthouse, at home, or anywhere else. You must not visit places mentioned in the trial or use the internet to look at maps or pictures to see any place discussed during trial.

computers or other electronic devices to communicate. Do not send or accept any messages related to this case or your jury service. Do not discuss this case or ask for advice by any means at all, including posting information on an Internet website, chat room or blog.

No Mid-Trial Discussions: When we are in a recess, do not discuss anything about the trial or the case with each other or with anyone else. If attorneys approach you, don’t speak with them. The law says they are to avoid contact with you. If an attorney will not look at you or speak to you, do not be offended or form a conclusion about that behavior. The attorney is not supposed to interact with jurors outside of the courtroom and is only following the rules. The attorney is not being impolite. If an attorney or anyone else does try to speak with you or says something about the case in your presence, please inform the bailiff immediately.
Jurors’ Use of Social Media During Trials and Deliberations

A Report to the Judicial Conference Committee on Court Administration and Case Management

Meghan Dunn

Federal Judicial Center

November 22, 2011
Findings

- Incorporate into jury instruction
- Remind on a regular basis
- Explain the reasons behind the ban
- Confiscate electronic devices
- Most (94%) take some form of precautionary steps
952 federal judges received survey

- 508 responded (53%)
- Represents all 94 districts
- Mean of 14.6 years on the bench

- 6% did not address jurors use of SM
- 79% admitted no way of knowing about a violation of the SM prohibition
• Only 30 judges (6%) detected use of SM during trial or deliberations

• Facebook, IM’s, Twitter and internet chat rooms

• 3 judges reported jurors “friending”
• 13 judges learned from another juror
• 5 judges learned via attorneys
http://worldmap.harvard.edu/tweetmap/
www.x1.com
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Beyond Powerpoint: Using Alternative Presentation Media

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We are all in the business of telling stories for maximum persuasive effect. Courtroom presentation tools and techniques have evolved on a parabolic curve in recent years. We have evolved from easels and newsprint, to nice graphics on poster board and markers on white board; from overhead projectors to Elmo™, and beyond. No other technology, however, has so radically elevated our toolkit for effective storytelling as Powerpoint® presentation software has. However, Powerpoint is not the end of the story.

The use of effective storytelling techniques is demonstrably persuasive to fact-finders in hearings and trials, as my co-presenters on this panel describe. Good use of presentation software can amplify this effectiveness many times. My colleagues here discuss how to tell a story for maximum persuasive effect. They also describe the hardware and software that can be used throughout the presentation of evidence and argument, such as Sanction II®, TimeMap®, combined with Evidence cameras, digital pointers and drawing devices and other similar technologies. These tools allow the litigator to continue the story from the presentation software throughout the conduct of the trial.

Effective Use of Powerpoint

The emphasis here is on the presentation software itself. That should begin with an admission that the Powerpoint application is and can be used as a highly effective means of telling a story. There are, however, rampant bad habits that many users of Powerpoint slides have. It is certainly possible to build better Powerpoint presentations. Guy Kawasaki’s 10/20/30 rule is this: “a PowerPoint presentation should have ten slides, last no more than twenty minutes, and contain no font smaller than thirty points,”¹ we’d travel a long way to better presentations, even without alternative means to present them.

Of course there is nothing magic about the 10/20/30 rule. Even Mr. Kawasaki offers an alternative font size of ½ the age of the oldest person in the room. Additionally, his rule as to length and number of slides was directed at entrepreneur’s pitches to venture capitalists. Though the rule of one slide per 2 minutes in your presentation rule probably remains valid for most presentations. This puts the slides as the backdrop, and as emphasis and demonstrative aid to the speaker. The speaker remains the center of attention, and the audience is not trying to read slides faster than the presenter can speak them.

For most presentations in court, the 20 minute rule is probably not a bad one to follow. Presenters should be able to communicate your story in that timeframe.

As Andrew Dlugan observes, “Martin Luther King Jr. only needed 17 minutes to share his dream. What makes you think you need more?”

The 30 point rule accomplishes two very important goals. Regardless of the execution, the first aim is simply easy readability. The second, arguably more important goal, dovetails with those of the 10 slides and 20 minutes. It forces the use of very little text, because more will not fit. The choices presenters must make to use few words per slide, on few slides, in a few minutes, require attention to clarity. This brevity is essential both in the slides presented, and in the talk given.

But, these are the “Powerpoint rules.” What of the alternatives? In a sense, these rules hold true for them as well. The length of presentation, the number of images, the effort to maintain the speaker as the focus, and the presentation software as the support are all guidelines that hold true. The advantage of the alternative media explored in this presentation is that they make it easier for the presenter to hew to these ideals.

Prezi

Prezi is a true re-vision of presentation software. Taking Guy Kawasaki’s guidelines to an extreme, presentations built on Prezi’s “canvas” are essentially one slide. You lay out your presentation on this “canvas” as a sort of mind map, linking ideas one to another in a progression where the structure of the presentation reflects the thought flow.

It harkens to law school final exam cheat sheets, when professors would allow us to bring one single sided sheet of paper to final exams. Of course everyone would write in 3 or 4 point font, usually laid out in tiny outlines or blocks of text. Fortunately, with Prezi we have the ability to use the technological equivalent of a magnifying glass to zoom in to that tiny area of 4 point font, since most of us don’t have 25 year old eyes any more.

Because of Prezi’s focus on “frames” inside the “canvas,” economy of words and text becomes necessary. This helps to enforce a succinctness that makes your presentation more effective. The zooming animations engage the audience to the key points you’re trying to make, while you still provide the context and the detail, keeping you as the focus of the presentation.

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Because the “canvas” represents your “mind-map,” and because it is visually familiar, and not a long line of slides, it is very amenable to Q&A from the bench in a hearing, or to quickly rebut opposing counsel’s arguments without distracting, and attention-destroying slide flipping.

Prezi runs as a web-based application as well as on your desktop, with presentations synced between them. Prezi also supports real-time collaboration in the online presentations.

Prezi has a free trial version, but for presentations without Prezi branding, one must pay $59 per year, or $159 per year to get the desktop application.

Prezi Examples:
http://prezi.com/efk4ptizplwm/?utm_campaign=share&utm_medium=copy&rc=ex0share
http://prezi.com/efk4ptizplwm/?utm_campaign=share&utm_medium=copy&rc=ex0share
http://prezi.com/yqmtgake47v/?utm_campaign=share&utm_medium=copy&rc=ex0share
http://prezi.com/mx4ocebdtxhs/?utm_campaign=share&utm_medium=copy&rc=ex0share

**Keynote***

In a very real sense, Keynote is to Powerpoint what Mac is to PC. The same, but not really. Mac has a long history of being the platform of choice for graphic design. Presentation software built specifically for that platform simply has a leg up in terms of style and design. The essence of good design is that it focuses attention on the subject of the design, and not the design itself. Such is Keynote.5

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One of Keynote’s great advantages is the way it helps get you started with “Themes.” These are in keeping with the premise that good presentations are “minimalist and cool.”

Keynote does not work on Windows machines (though presentations can be exported to various formats that do.) However, Keynote has apps that run on iOS, bringing your presentation device to something you can carry in your pocket. Getting the laptop out of the way can be liberating as you present to a court or jury.

Keynote is $19.99 from the App Store on Mac OS X, and $9.99 for the iPad version.

**Zoho Show**

Zoho Show is another effective alternative to Microsoft Powerpoint. Zoho Show is part of a suite of applications positioned as an alternative to Microsoft Office and Google Docs. Zoho allows for online collaboration in each of its products. This can make it easier for you to work on a presentation with colleagues, whether nearby or remote. Version tracking is maintained, so changes you don’t like can be found and reversed. Zoho Show makes web publishing super-easy as well.

Zoho Show will be familiar to those of you who are Powerpoint users. In fact, you can import and export from the .ppt, .pptx, and other formats.

Zoho Show is part of Zoho’s suites of software, which has a free version, or you can pay $5 or $8 per user per month for more storage and capabilities.

https://www.zoho.com/docs/zoho-docs-pricing.html

**Open Office 3.1 Impress**

This product is notable more for its price (free, though donations are accepted) than for any functionality that differentiates it from Powerpoint. It is certainly less feature-rich, but mostly in features you wouldn’t (or shouldn’t) use.

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Adobe Acrobat.com Presentations / Google Presentations

Adobe and Google each has Online Presentation applications that allow users to produce simple presentations, quickly and easily, and allow collaboration. Adobe's product will not allow import or export of Powerpoint, while Google will import Powerpoint as long as its under 10MB.

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Using Technology to Persuade

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A. The Rise of High-Tech Courtrooms

Technology only recently came into its own in the courtroom. In the 1990s some lawyers did use technology for their trial presentations. Usually it was limited to playing audiocassette tapes of criminal conversations or VHS surveillance video, but a number of vendors offered the ability to put thousands of documents onto large laser-disk platters, such that any individual document could be accessed and projected when the trial attorney scanned a corresponding bar code. Those systems were not used often, however, for a number of reasons.

First, they were expensive. It could easily cost ten to twenty thousand dollars to convert a large universe of documents onto laser disks, and that did not include the rental fee of the equipment that had to be used for both the trial and the trial preparation. But wealthy corporate clients who could afford this type of a setup in a big case were also worried about another issue: they harbored the very legitimate concern that jurors would hold it against the presenting party, believing that party to be the Goliath against the other side’s poor David. That also assumed that jurors would understand and appreciate what they were seeing; or would they be too focused on the “slick” presentation to notice the substance of the evidence?

Then there was another legitimate concern that, once all the time and effort had been made to hire the vendor, digitize the documents, affix the barcode labels to outlines, and rent the equipment, the judge would simply refuse to admit the system into court, either because of perceived undue prejudice or naïveté.

Today, things are different. Most high-profile trials use presentation technology. Jurors are well aware that programs like PowerPoint come with practically every laptop computer sold, and even lawyers representing the Davids of this world can likely afford a laptop and the other now-common equipment necessary to present evidence electronically.

Further, numerous studies have now found that, rather than holding it against a side that uses technology, jurors wonder why the other side did not use it also. One Juror Outlook Survey by DecisionQuest and The National Law Journal found that more than 72 percent of jurors between the ages of eighteen and twenty-four reacted positively to a computer or video-simulated presentation of facts.¹ Jurors, in fact, view “law like a spectator sport” and “usually find out that real life trials become dull,” says Reiko Hasuike of R and D Strategic Solutions.

Today, it is rare that a judge would not allow technology in the court. (But be sure to raise the issue in advance, especially when in federal court, where you will likely need a court order to bring computers and other technology into the building.) Studies have found that trials using technology to present evidence take as much as thirty-five percent less time than without. The federal system has embraced technology and is installing electronic evidence presentation systems into new and pre-existing courtrooms at a rapid pace. State courts are doing the same. Orlando, Florida’s wired courtroom 23 gained notoriety as a great success, and other states are following suit.

Today, evidence presentation is no longer under the exclusive control of consultants and vendors. Lawyers and paralegals can do much of what the vendors do, sometimes at a fraction of the cost. Although judges may like technology because it speeds up trials, and it does keep the jurors’ attention, no lawyer would ever want to use it if it did not actually help win cases.

¹ Litigation News March 2003, Vol. 28, No. 3.
With all the great advantages of using technology for evidence presentation, and the concerns of yesteryear largely alleviated, why is it that a Litigation Technology News survey found that only thirty percent of trial lawyers are using some form of computer technology in their trial preparation and evidence presentation? The answer is simple, and frankly, understandable: fear.

Even lawyers who wouldn’t be found in a client meeting without their laptop still cower at the thought of using that same laptop to project exhibits to a jury. The first thing to understand is that this fear is justified. You should be afraid—lots of things can, and do, go wrong. Hard disks crash, projector bulbs burn out, and any one of a number of things can happen to bomb an otherwise well-planned and excellent presentation.

Given all the advantages of technology, and all other things being equal, those thirty percent of lawyers using technology (like those first users of personal computers in the 1980s) have a competitive advantage over the side that does not. With children in second grade begging their teachers to use PowerPoint to present reports in class, this competitive advantage will not last. Someday soon, courts and juries alike will expect lawyers to be just as at ease with electronic evidence presentation as they are with legal research.

Thus, the time has come to control, not eliminate, the fear of using technology for evidence presentation. By learning about the hardware and software, lawyers become comfortable making and giving electronic presentations. Knowing the law is also helpful, and having a backup plan is always a must. When you these things are accomplished, the fear will subside and will to a large extent be replaced with the confidence of commanding the technology and knowing that, even if something unexpected happens, the show will still go on.

B. System Specifications and Requirements: Building an Affordable Evidence Presentation System That Can Be Used from the Smallest Conference Room to the Largest Courtroom

Technology-enabled courtrooms, sometimes called electronic courtrooms or high-tech courtrooms, are being built throughout the country in federal and state courts, as well as in law schools and law firms. Although there is near universal acceptance of these modern courts, there is a great difference in how such courtrooms are configured, and the fact is that virtually any courtroom can be converted to enable electronic evidence presentation for any given trial with minimal expense.

The key component is the evidence-presentation system. This can be as simple as a laptop showing PowerPoint slides through a single, well-placed projector, or as advanced as to include an evidence camera, telestrator, multiple large and/or small flatscreens, audio and video playback devices, judge cut-off switches, and input connections for any necessary computers.

If you have never presented with an electronic evidence presentation system and decide that at your next trial the time has come (assuming that the courtroom is not already pre-equipped) you can still call one of the many excellent trial technology vendors, which may be the way to go for the real novice. But for almost the same price as one of the vendors might charge to rent the hardware and provide a person to operate the system during trial, you can purchase most, if not all, of what you need to create your own evidence presentation system. The system can then be used again and again, in any courtroom, and at arbitrations, mediations, client meetings, and settlement conferences as well. Systems can be set up differently depending on budget, length of trial, courtroom space, etc. And you can start small and build as you go. The following is a list of things you may want to consider purchasing instead of renting.
1. Hardware

a. Laptop

Your laptop is home plate. It is from where you can launch exhibits through any number of linear or non-linear software products discussed later. Even with the advent of iPads and other slate devices, laptops still remain the computer of choice in the courtroom because they are portable and offer all the power and versatility of desktop models. Most laptops on the market offer the necessary power, but you will want as large a hard drive and as much RAM as you can fit—this will ensure the speed necessary to run any animation or video presentation.

If you want access to a large document and/or video database, you may want to get an external hard drive. Storage has become cheap and terabyte drives are common and very affordable.

Most laptops come with a VGA port. Make sure yours has one or that you get a VGA adapter for whatever port you do have. The VGA port is the video graphics output. In other words, if you plug a standard monitor into this port you will be able to see the output on both the laptop’s monitor and the external monitor. If you are only using one outboard display device, which often is all you will need, you should output to a digital projector. Projectors are discussed in more detail in the next sub-section, but you can fit both your laptop and many digital projectors into a standard-size litigation bag, which makes this the ideal setup to take anywhere, from mediations in small conference rooms, to many full-size courtrooms.

Keep in mind that one key to a big-time evidence presentation system is a device called a VGA splitter. By plugging in a cable from your laptop’s VGA port to the input of a VGA splitter, you can amplify the signal and feed a number of projection devices. Splitters generally come with either four or eight outputs, and are relatively inexpensive (e.g., $125 for a four-output splitter). They can be daisy-chained—in other words, you can take one of the outputs from a splitter and feed it into the input of another splitter to give even more output possibilities.

Thus, with VGA splitters and the right combination of projectors and monitors, the possibilities are endless. And the same basic system can be customized for any particular courtroom or arbitration setting. For example, with an eight-output VGA splitter (and the appropriate VGA cables), you can project your PowerPoint out to a monitor on the judge’s bench, one at the witness stand, one at each counsel’s table (assuming two parties), one for the clerk or judicial assistant (they often want one), and one to a digital projector projecting onto a big screen for the jury and any onlookers to see. In fact, this makes for an excellent set up.

Keep in mind that while items like VGA splitter boxes and the long runs of cables you will need are often not available even in computer superstores, they are readily available on the Internet. Just be sure you order well in advance of trial to be sure everything is ready in time. While you are shopping, be sure to buy the rubber strips that enclose the cables on the floor and help prevent people from tripping. Often people will even tape down those strips with gaffers tape (like duct tape), but be careful with this. Tape may leave residue and judges are rightfully protective of their courtrooms.

b. Digital Projector

Old-fashioned slide carrousels and transparency-based overhead projectors were made all but obsolete by the digital projector that attaches to computer and other electronic sources. Projectors are an excellent investment, because with a digital projector and a laptop, a lawyer can present evidence from the smallest conference room to the largest courtroom.
They cost from less than $1,000 on up. They can weigh from four to twenty-three pounds or more. Keep in mind that size generally comes at the cost of brightness; however, brightness is key—you never want to have to turn down any lights, especially when you don’t know if a court will allow it.

The unit for brightness is ANSI (the American National Standards Institute) Lumens. Many of the lower-cost models deliver only 700, 800, 1,000, or 1,100 or 1,200 Lumens, but 1,500 should be considered the absolute minimum for evidence presentation, with 2,500 or more preferred.

One of the biggest fears of using a projector is that the bulb can burn out at the wrong time. Fortunately, unless they are dropped, bulbs usually don’t go out at once, but become less effective, which results in a washed out look of the output. Sometimes it appears they are too bright because the output is all white when, in actuality, they are going bad. Lifespans, which generally range from 1,500–4,000 hours, and cost of bulbs are, therefore, important. Bulbs can cost in the hundreds of dollars and often are not readily available in stores but must be ordered online.

LCD projectors are the most common on the market. LCOS (Liquid Crystal on Silicon) projectors use an LCD array directly on a chip, which can produce a sharper picture. DPL technology involves using a tiny mirror for each pixel on a chip.

Inputs include VGA, component, composite, and S-Video. There are a few things you must understand about outputting from a laptop to a projector. Some first-time users become very frustrated because the output will appear to chop off part of what is seen on the laptop monitor. This is because one must first determine the projector’s highest available resolution and match it to the computer’s output. For example 800 x 600 projectors are quite common, and 1,600 x 1,200, a standard for many laptops, is still a more rare and expensive projector standard.

The fix is easy. The Display function in Windows has a setting for Resolution. Usually, by setting the computer to a lower (sometimes, the lowest) resolution, the output will become perfect. The only trade-off will be that the picture within the monitor might be smaller. In other words, there will be a small black border around the image in the laptop screen. Everything, however, will still be clearly visible.

The other problem that often causes major angst, is when MPEG video files are output from the laptop through the projector and all that is visible on both outputs is a black box where the video had displayed so perfectly when preparing the presentation at the office. This is caused because some systems cannot handle displaying video on both the computer and the VGA output. Again the fix is simple, although there is small price to pay.

Most computers have a three-way toggle switch for the VGA output. Assuming both the monitor and laptop displays are visible, by toggling the computer display function, the computer’s monitor will turn to black and the external monitors will stay “live.” If you hit this combination again, the computer’s monitor will stay live and the output will shut down to black. Hitting one more time returns everything live. When you run into an MPEG video output problem, simply toggle the output display until only the external devices are live. The video should display perfectly.

The drawback, of course, is you won’t be able to see the output on the laptop, but if you have set up another monitor or the projector within viewing range, it won’t be a problem. Note that when trying to run video out to other monitors, some versions of Windows will ask how you want to handle the output setting (i.e. whether it should display on the laptop or external monitors). Be sure to test-run any video with the system you intend to use in advance. This is a good idea for all components of the presentation in any event.
By the way, toggling the output display is also a great trick to prevent the audience from seeing what you are doing on the laptop—when skipping ahead or behind to another PowerPoint slide, for example. You should practice and get comfortable with this toggle, and you will soon enjoy the power of being in absolute control of the presentation.

Note that some projectors include speakers, which generally do not come close to the sound quality available from even the small stereo speakers designed to plug into computers. Don’t spend any more money for a projector with speakers. You are far better off using even the cheap external speakers that come with many desktop computers.

c. Evidence Camera

There are many bells and whistles that will augment an evidence presentation system. Annotation equipment, like telestrators, light pens, and digital tablets can, if you are comfortable using them, be a welcome addition. But after the basic laptop-and-projector/monitor set up, there is one piece of equipment that is really worth the investment.

They are called by different names—the evidence camera, document camera, overhead video projector, or (by a brand name) ELMO. Essentially, an evidence camera is a portable device whereby a video camera is mounted facing down onto a base where documents and small items of evidence (e.g., guns, drugs, fabric, or other products) may be placed. They often have two light sources, lights below the base and two arms that cast light down onto the base, with a toggle switch to select which set of lights to use.

The devices have VGA outputs so that the video image of whatever is placed on the base can be directed out to the splitter box and then the monitor/projector setup. Usually, there is also a VGA input as well, so that instead of sending the laptop output directly to the splitter box, the laptop is input into the evidence camera. With the (recommended) evidence cameras that include VGA input, you can then toggle between the output from the laptop and the output from the evidence camera without any need to change the cable setup.

Even when all the documents in a case have been digitized and stored electronically for presentation through the computer using PowerPoint, Sanction, TrialDirector, or other presentation software, there are times when it is helpful to display the actual document itself, perhaps because the document was new or unexpected, or simply for a change of pace. Using the rear lighting can also enable the display of x-rays and other medical film. Be careful, however, some x-ray film will be too dark to display properly with the limited rear lighting of many evidence cameras.

Evidence cameras are surprisingly simple to use. Generally, there is a switch to control the lights, the VGA-output switch, a zoom in and out switch, and a focus switch with an auto-focus button. More and more courts are being equipped with evidence cameras, and you should absolutely familiarize yourself with any new device before the beginning of any trial.

Evidence cameras are also a great way to annotate documents on the fly. Because they present a live video feed of the image, juries can watch a lawyer check, circle, and highlight portions of any document placed under them. It is not uncommon for lawyers to create a chronology and display it in their opening statement. Then, as witnesses during the course of trial confirm each entry, the lawyer will highlight or check-off that fact and by the end of trial effectively demonstrate that each item promised was proven.
One of the few drawbacks of evidence cameras is that they are not great at projecting an entire page of a typewritten document. The page may be readable, but only with much effort, and jurors with bad vision may have problems. The simple answer, however, is to use the zoom function effectively. Start by showing the entire page, then as the testimony or argument warrants, zoom in on the key language.

This is also an effective way of ensuring that the finder of fact is focusing on what you want them to see without the distraction of irrelevant language. Moreover, the zoom function can be used with great dramatic effect if, for example, a document number at the bottom of a page is zoomed into at just the right moment to show that the document was created after the fact. A document camera, coupled with the previously mentioned laptop/splitter/monitor/projection setup makes for an outstanding total evidence presentation system.

2. Software

Once the hardware setup is established, the lawyer must determine what software will be used to present the evidence and demonstrative aids. Essentially, there are two choices: linear presentation products, like PowerPoint (Apple and Corel make similar products, but because the vast majority of computer users have PowerPoint bundled with their Windows package, the focus here is on PowerPoint); and non-linear software packages like Sanction II, Trial Director, and proprietary vendor systems like FTI’s TrialMax.

PowerPoint is a linear presentation package because the presenter proceeds from one slide to the next in the order the slides were initially set up. The non-linear packages are set up so that exhibits, transcripts, and even video depositions, can be randomly accessed when needed at trial. In other words, when you suddenly need to present defendant’s exhibit 63, simply type DX63 (or whatever you pre-named the image) and that document will appear on the screen. Both linear and non-linear systems have their advantages and disadvantages, and it is certainly no problem to have both running and switch back and forth. In fact, most non-linear packages are capable of launching a linear PowerPoint presentation without leaving the application.

a. Non-Linear Presentation Software

Of the currently available non-linear presentation applications, Sanction II and TrialDirector are the most widely used. Other similar products, like TrialPad are becoming available for iPads and similar devices.

Sanction II has an advantage over TrialDirector in that it is entirely contained and executed within one application. TrialDirector works in conjunction with a sibling product, DepoDirector, to format and manage video depositions.

In addition to the advantage these products offer of being able to instantly access any document from large databases of scanned images, they offer excellent annotation and manipulation tools. Once a document is brought up on the screen, it is very simple to drag a box around key text, which will then explode out. The lawyer conducting an examination can also use a yellow highlighter tool to emphasize language, or drag an arrow to point anywhere on the document, all on the fly.

Moreover, these products offer incredibly powerful video deposition management. Every deposition in a case can be transferred to MPEG video format and linked to the ASCII text version of the deposition. Then, any word can be instantly searched, and when the relevant testimony is located and marked, it can instantly be launched, for example, for impeachment purposes. The jury will then see the deponent’s testimony with the transcript scrolling under at the bottom of the screen.
There are really only two disadvantages to these systems. First, they require training and take considerable time to set up. These products are not as intuitive as, for example, PowerPoint is to a user of Word. Documents must be loaded in a similar fashion as loading the document databases discussed earlier, and unfortunately the document database products (e.g., Summation, Concordance, and Relativity) are not designed to present the documents and video to juries, so any images previously stored in a database will have to be exported into the presentation package. Moreover, linking the video testimony to the ASCII transcripts can be an arduous process.

Vendors can provide this service, but it can also be done in-house. Essentially, an operator must watch the tape and transcript scroll while hitting the computer’s space bar each time the deponent gets to the end of a line. Then the two are linked so that when the text is searched and marked, the video will know where to play. This, however, can take many hours. (Someone must obviously watch the entirety of every deposition that might be used.) The advantage and expense of this capability must be carefully weighed against how necessary it will actually be. In many cases, the lawyer will already know the five or ten key sections of deposition (admissions, points of contention, dubious explanations, etc.), and it may be far simpler and more inexpensive to simply convert those specific sections to video clips that can be launched from PowerPoint.

The other disadvantage to the non-linear software is that there is little elegance to the presentation. True, documents can be manipulated and annotated to great effect, but the background to the presentation is simply black. PowerPoint, on the other hand, offers the opportunity of customizing the look of the background. Many lawyers, for example, like to have blue backgrounds, because blue is the color of credibility.

b. Linear Presentation Systems (PowerPoint)

The ubiquitous PowerPoint is really an excellent product. It is relatively simple to use and, once proficient, a lawyer can easily create and edit slides very quickly, even at trial. PowerPoint can present bullet points of argument, chronologies, animated document call outs, video clips (or whole depositions), motion graphics and, practically anything imaginable.

By being able to customize the look of the presentation (i.e., the background), users can create very polished presentations. Creating backgrounds is generally the first step of the process. Again, absent other considerations, an austere shade of blue is always a good background. But sometimes there will be a reason to go with another color. If, for example, you represent a well-respected company that is associated with a certain color scheme, having that color scheme be the look of the presentation sends the message that the lawyer is proud of, and stands behind, the client. Often is a simple matter of going to the client’s Web site to copy the color scheme, and even the client’s logo, which can be placed in a corner of the background.

A main drawback of PowerPoint is that the slides are presented in a linear fashion, one after another. Specific slides can, however, be displayed out of order with a simple trick. By knowing what number in the presentation each slide is, the user can simply type that number, then Enter, and that slide will automatically appear from anywhere in the presentation. Thus, a lawyer who has a presentation of twenty documents, with one on each page, can easily go to document fourteen by simply typing 14+Enter. Then, when the testimony turns to document seven, the lawyer will type 7+Enter.

The other seeming drawback of PowerPoint is the relative inability to annotate on the fly (it does have a pen and arrow tools, but they are cumbersome and usually should not be relied upon). That is overcome by planning. Documents and images can easily be annotated, and with better tools than the
non-linear products. The annotations and designs just must be done ahead of time. Again, usually lawyers know well in advance of trial the specific language or portions of a document they want to emphasize. It is no problem to call out, highlight, box, arrow, or animate just those portions of the image in advance, so that when the “next slide” button is clicked, the action happens.

C. The Fundamentals of PowerPoint for Litigators

PowerPoint is relatively easy to self-learn. When creating your first presentation, the autocontent template wizard is helpful for determining both the background design that will be used in the entire presentation, as well as the layout of any given slide. Soon, it becomes a simple matter to control these elements without the wizard.

After the background has been set up, the first thing to know about PowerPoint is the Insert drop-down menu. This is the first step in creating any slide. If you want to create a label or a list of bullet points, simply hit Insert, Text Box, and drag a box where you want to put the text. Typing and typography is intuitive for Word users, even better as there are no styles to worry about.

Take advantage of PowerPoint’s Insert, Picture function. By scanning documents into TIFF images (or most other formats), those images can be dropped into slides. Thus, instead of bullet points, the viewers are looking at the documents themselves. It becomes a simple matter using the crop and draw tools to call out the good (or bad) language, and force the viewer to focus on only that evidence.

Using Insert, Picture, you can show practically any kind of document, including photographs, charts, summaries, crime scene schematics, maps, transcripts, and police reports. Using Insert, Video or Audio, you can attach a video file or audio file, so that when the next-slide button is clicked the testimony (or sound file) comes up instantly. There are any number of creative uses for this. For example, if you have five good questions and answers from a video deposition, each can be put into a one-slide PowerPoint presentation, each launchable from an icon on your computer’s desktop. When the witness at trial tries to give a different answer than given to one of those key questions in deposition, instead of impeaching the old-fashioned way (with the transcript), simply ask the witness if the following video clip truly and accurately portrays the deposition testimony—and hit the icon for that question. This can be very effective.

Also, keep in mind that PowerPoint has a very strong capability to do motion animation using motion paths. For example, one can animate maps, cars on diagrams, or dollar signs, money bags, and the like. It is well worth it to learn this function.

Finally, and most importantly, be sure to have double, if not triple, redundancy. This is the best way to control the fear of using technology. For an important big case, have a spare laptop cloned with exactly the same presentations as the primary (and don’t forget the extra projector or bulb). In addition, have printout flip charts ready to hand out to everyone (judge, jury, opposing counsel) in the event of ultimate disaster (e.g., power failure). Practice the presentation with and with out the technology. Not only will this ease the fear substantially, but your presentations will improve dramatically.

D. The Psychology of Demonstratives

One reason technology can be such a strong element of any evidence presentation is the same reason that lawyers have used demonstrative aids (whether on blackboards, butcher paper, or transparencies shown through overhead projectors) throughout the ages. Most studies show that people remember about ten percent of what they hear, twenty percent of what they see, and sixty-five percent of what they both see and hear. Moreover, fifty-five percent of credibility is generated visually (often translating into dress, mannerisms, and graphic presentation). Thirty-eight percent of credibility is vocal
(think boring versus animated). And only seven percent of credibility comes from content. Similarly, only thirteen percent of learning is achieved through hearing, but seventy-five percent by eye sight. (The other twelve percent is from taste and smell.)

With slide applications, professional presentations can be psychology engineered for any case. Of course, before preparing any preparation, the legal team must develop the themes of the case, and determine the critical evidence that supports those themes. The key language from documents then is incorporated into slides to be called out and highlighted.

“Too many words” seems to be the biggest challenge with most PowerPoint presentations. People either do not want to read dense blocks of text, or simply will not remember it all. Thus, lawyers must do anything possible to limit titles and call outs to as few words as possible. Slide titles are critical and each should read like a crisp bumper sticker, consistent with a psychological element or theme of the case. The doctrines of primacy and recency mean that the first and last things you say to a jury are the most remembered; and this translates to slide presentations as well, where the first and last slides should usually be the most important.

Creating bullet lists of the outline you want to discuss is a common mistake. Often these bullet-point outlines are over-animated with text flying in from all directions, and they not only bore the viewer, but become nothing more than a crutch for the presenter.

In creating slides, there are some useful points to remember. Visibility is critical—slides must be readable by even those with poor vision at the back of the room. Use crisp lettering with few words and few lines per slide. Use sans serif fonts (Tahoma and Arial) for titles, and serif fonts (Times New Roman) for bullets and multiple text lines.\(^2\) Use colors effectively. Blue is the color of credibility, but red is the color of impact (usually negative). Green is often associated with “good,” “go,” or “money.” Yellow can signify change (on a timeline, for example), or emphasis (highlighting). Grey and black can be serious and signify importance, hence the so-called black-box warnings. Each slide should be limited to only one point or “take-away.” Limit not only the content on each slide, but the total number of slides in any presentation. They say that “power corrupts and PowerPoint corrupts absolutely.” Too many slides can lessen the impact of the entire presentation. The presenter should always be the center of what is going on. Remember that the presentation is simply a tool to augment and emphasize the most important points of the message.

E. Law Related to Evidence Presentation

Demonstrative evidence or aids change as technology advances, and courts are given wide discretion in making admissibility determinations. Generally, the standards are similar to any evidence—foundation, accuracy, prejudice versus probative value, hearsay, best evidence, and whether the demonstrative is overly argumentative. Usually “fair and accurate” is the key principle. Four factors should be considered regarding the evidentiary foundation of any exhibit: (1) the competence of the witness testifying about the exhibit; (2) the relevance of the exhibit to the case; (3) the identification of the exhibit; and (4) the trustworthiness or authentication of the exhibit.

Diagrams of accident sites or crime scenes from police reports are often held to be accurate representations. Bar charts and pie charts are well known to being fertile ground for inflating, truncating, skewing perspective, and omitting data.

In State of Connecticut v. Swinton, 847 A.2d 921 (Conn. 2004), the Connecticut Supreme Court set forth guidelines for the admissibility of digital data, giving six factors to which a witness need testify

as foundation for admission of computer-generated evidence: (1) the computer equipment was in good working order; (2) operators of the equipment were qualified; (3) proper procedures were followed; (4) reliable software was used; (5) the program operated properly; and (6) the exhibit derived from the computer. Make sure anything computer generated has this proof underlying it.

See also the following cases: United States v. Burns, 298 F.3d 523 (6th Cir. 2002) (holding that any confusion as to actual amount of crack cocaine and cash the PowerPoint slides may have caused was cured by instruction); Milson v. State, 832 So. 2d 897 (Fla. Dist. Ct. 2002) (use of PowerPoint to illustrate verdict form deemed proper); Clark v. Cantrell, 529 S.E.2d 528, 536 (S.C. 2000) (carefully examine for accuracy and prejudice); Sommervold v. Grevlos, 518 N.W.2d 733, 738 (S.D. 1994) (same); State v. Farner, 66 S.W.3d (Tenn. 2001) (probative value of animation contradicted by several eyewitnesses was “substantially outweighed by danger of unfair prejudice”); Commercial Union Ins. Co. v. Boston Edison Co., 592 N.E.2d 165 (Mass. 1992) (three part test for computer-generated exhibits: (1) computer functions properly; (2) underlying data are complete and accurate; (3) software is generally accepted by scientific community); Bray v. Bi-State Dev. Corp., 949 S.W.2d 93 (Mo. App. 1997) (affirming admission of simulation based on Commercial Union criteria); Livingston v. Isuzu Motors, Ltd., 910 F. Supp. 1473 (D. Mont. 1995) (using Daubert analysis court affirmed admission of computer-generated accident simulation).

And see the following rules: Fed. R. Evid. 901(a) (“the requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what the proponent claims.”); Fed. R. Evid. 1006 (Summary Evidence: “The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at a reasonable time and place. The court may order that they be produced in court.”); Fed. R. Evid. 611(a) (for demonstratives that explain and clarify other evidence: “The court shall exercise reasonable control over the mode and order of the interrogating witness and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.”).