

Litigation Support TODAY™

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BEST PRACTICES

PART 1

Staying on Target with Electronic Trial Presentation Tips- The People & the Tools

By Derek Miller



The fundamentals of trial have remained unchanged for hundreds of years, but the effects of the technology revolution on the practice of law over the past two decades are undeniable. This is nowhere more apparent than in forensic evidence identification, case management, and courtroom presentation. While forensic breakthroughs such as DNA and trace evidence identification have rightly grabbed the public's attention, computer-driven technologies have had a substantial impact on the effectiveness and ease of trial presentation.

This is the first of a two part series discussing various aspects of electronic trial presentation. This issue will discuss when electronic trial presentation is recommended, who you need to get the job done, and the hardware and software necessary to succeed. Following-up in the next issue of *Litigation Support Today*, information will be provided covering the logistics and protocols of putting it all together for sure success.

When to Use Presentation

Technology Just as you wouldn't swat a fly with a hammer, you won't use presentation technology in every case. Generally speaking, the more complex the matter, the greater the value of presentation technology. Those cases in which a jury is required to visualize a scenario or a procedure are excellent candidates for presentation technology. Trial presentation technology also provides an effective tool for comparing one or more items, such as documents or photographs. For simple lists of facts or numbers, flip charts may be your best bet. If you're just getting started with presentation technology, consider using it in an arbitration or mediation. The less formal environment of these types of proceedings provides an excellent arena in which to develop your presentation technology skills.

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Assembling Your Team

Courtroom technology is a tool, and as with any tool, it is only as good as the people using it. Like a novice with a gun, an unskilled user of technology in the courtroom is more likely to shoot themselves in the foot than to score a bull's-eye.

Typically the first- or second-chair attorneys do not drive the computer system for the electronic presentation. A courtroom presentation technologist manages that aspect of the process, which can be someone on your staff or a trial consultant. If you utilize an in-house person such as a paralegal

make sure they are well trained on the presentation tools. That person also must have ample time in advance of the proceedings to rehearse with the case material. Keep in mind and remind the attorney team that the person who is handling the courtroom presentation may well not be available to fetch witnesses, copy paper exhibits, or track down a missing expert.

In addition to the presenter, have someone available to support the technology infrastructure should a glitch occur. In many instances, the presenter and the infrastructure support may be provided by the same person. If this is not the case in your situation ensure that an IT

person is present to assist at a moments notice.

As with home improvement projects, there are times to be a do-it-yourselfer and times to call in a specialist. This is where trial presentation consultants can be invaluable. These techno-experts can manage your presentation needs on many levels, from running the presentation while the attorney is speaking, to setting up the equipment, to designing graphics and simulations. The consultant's depth of expertise allows the attorney you are supporting to focus on the trial and not be concerned about the mechanics of the technology. Trial consultants are specialists with extensive knowledge of every facet of trial, including jury selection, witness preparation and presentation technology.

When do you need a trial consultant? Consultants can assist you before, during, and even after a trial. A good, experienced trial consultant can help the attorney prepare witnesses, plan the presentation strategy, organize the trial notebook, and present the case at trial using trial presentation software. If the attorney is just beginning to use presentation technology, a consultant might be a prudent safety net. Since trial consultants are frequently in the courtroom, they are usually very familiar with creating an effective electronic

Responsibilities of a Trial Consultant

- Assist clients in pre-trial preparation, including database creation and maintenance
- Provide assistance with presenting electronic and demonstrative evidence using well established trial presentation software
- Coordinate data — video, documents and demonstrative evidence — in proper locations to ensure ease of use, search and retrieval
- Help paralegals, attorneys, and expert witnesses understand what presentation techniques work best at trial
- Schedule equipment setup and teardown with court officials
- Provide assistance in renting/purchasing presentation equipment
- Ensure equipment locations for lines of sight, lighting and audio are satisfactory
- Work with expert witnesses and outside vendors to produce quality exhibits
- Provide complete technical support for presentation systems and technology
- Assist in the preparation, creation, or modification of exhibits
- Provide on-site video and audio editing
- Produce professional quality PowerPoint presentations
- Produce trial and witness notebooks

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presentation and interacting with the court's staff on technology issues. Do you have a high-stakes trial coming up? The decision to use experienced trial consultants in that instance is a "no-brainer." You do not want to risk the presentation of electronic evidence in such a high-pressure situation to an inexperienced presenter.

Who you should recommend and use is the next question. Look for a courtroom consultant who has been in business a long time, and be sure to get rock-solid references. This isn't the time to gamble. Thoroughly interview candidate consultants to see what they know, and remember to ask specific questions such as the number of trials they have worked on, the extent of their involvement in those trials (some consultants may say they were involved in a trial when all they did was provide a half-day of presentation assistance as a stand-in), what equipment and software they use or recommend, and with whom they've worked. All trial consultants are not created equal. Investigate the depth of their experience so that you make sure that the consultant you select is a good match for your case.

Providing the Right Tools - Hardware

Specifying the ideal hardware configuration for supporting elec-



tronic trial presentation is difficult. Not only do hardware capabilities change on nearly a daily basis but also courtroom presentation technology continues to rapidly advance. Also, your needs will likely vary from case to case. (See sidebar for one suggested configuration.) As a general rule, spend the extra money to get the fastest processor and extra RAM on the computer used for presentation. The result will be a faster, crisper display of video and document images, especially when you work with large files. Remember also to upgrade your trial equipment regularly. If you bought top-notch equipment, you'll be able to recycle your equipment to someone else in the office. They'll be pleased to have your powerful hand-me-down.

Whenever possible, use dual monitors for your presentation computer and take advantage of the ability to extend the computer's desktop across two monitors. This allows the presentation technologist to keep the presentation running on a dedicated screen while using the second monitor for other tasks, such as making on-the-fly exhibit updates or modifying video clips to reflect the court's rulings on admissibility.

Make sure up-to-the-minute backups of your data are maintained should something go awry. Your presentation is likely to be contained on a single computer, typically a laptop. What would happen if the computer were dropped and damaged, or worse, stolen? For about \$150, you can buy an external hard drive with enough storage space for all but the largest cases. Such drives are about the size of the box your Blackberry came in. Plug the hard drive into any compatible computer, and you're back in business. This is where having a duplicate system in the war room may come in handy.

Don't forget that you may need a backup for your organic equipment – the presentation technologist. What happens if the presenter gets sick? Try to have a qualified person available to step in during an emergency. This is another time when consultants can help you.

Providing the Right Tools – Software.

A trial presentation computer should always include a full copy of your case data, including the evidence management software used in the office. In addition, the computer should contain copies of any tools used to prepare documents for trial, such as CorelDraw®, PhotoShop®, Adobe Acrobat®, or any dedicated trial presentation software. For simple courtroom presentations, you may find that a generic presentation tool like Microsoft PowerPoint® is sufficient.

The advantage of PowerPoint is that many people are familiar with it, so finding a qualified presentation assistant is relatively easy. PowerPoint lends itself well to pre-planned presentations. Using PowerPoint, it is possible to display an array of embedded programs, such as Excel tables or video streams. But for trial, PowerPoint's weakness is its inflexibility. Revising a PowerPoint presentation on-the-fly is awkward; retrieving a slide out of sequence can be cumbersome and distracting when you're trying to achieve a seamless presentation.

PowerPoint also lacks some more advanced features (such as easy zooming on particular text) that can help a jury understand critical pieces of evidence.

Dedicated trial presentation programs, seek to overcome the limitations of PowerPoint. Trial presentation software is designed to display a variety of different formats at the same time, so the programs are optimized to meet the specific needs of litigators. For example, you can display a deposition video with scrolling transcript text while simultaneously displaying related exhibits.

Using software specifically developed for use in the courtroom, you can work from a prepared presentation yet seamlessly adapt as needed. Embedded tools in the application allow you to quickly locate and extract impeaching testimony from video depositions, or recall and highlight exhibits. Some trial presentation programs give you the ability to keep track of the admission status of the trial exhibits. The key value with these tools is their adaptability, the capability to immediately respond to chang-

ing conditions in the courtroom, to easily recall just the information you need, just when you need it. A technologist who is experienced with trial presentation software can make a critical difference when courtroom conditions change.

Conclusion

Knowing when to use electronic trial presentation, ensuring that you have the right people for the job and the right tools are only the first steps to successfully use these techniques. Logistics and protocols, or putting it all together, are the other essential elements. In the next issue of *Litigation Support Today*, Best Practice Tips will address the how-to for bringing it all to the courtroom smoothly and professionally.

About the Author

Derek Miller is the CEO and President of inData Corporation. Mr. Miller currently serves as a technical committee member of IASTD (The International Association of Science and Technology for Development) and is a member of the ASTC (American Society of Trial Consultants).