

A Practical Guide to Presenting Electronic Evidence at Trial **By Scott Lefton**

Technology has come a long way in just a few short years. Trial presentation software such as TrialDirector gives attorneys the ability to show electronic evidence, side by side deposition video, carry millions of pages on single hard-drive, and work dynamically with exhibits and demonstratives. The main benefits of multi-media presentations are that they reduce the delays inherent with working with paper and visually engage and educate the jury.

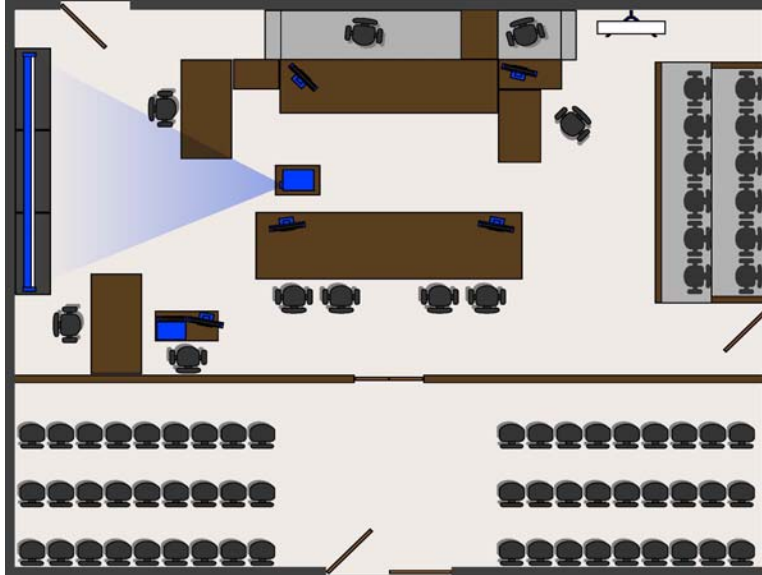
Presenting electronic evidence in court presents many technical and practical challenges. Some courts (especially Federal Courts) are already wired for electronic presentation, but many courts are not. A courtroom presentation system typically consists of a projector screen or large flat panel monitors for the jury, individual monitors for the judge, witness, clerk, and counsel tables. In addition you may find a digital lectern with touch-screen monitor, DVD/VHS player, and document camera (if you're lucky).

A) KNOW YOUR COURTROOM AND EQUIPMENT

Every courtroom is unique and often requires a specific layout. A courtroom inspection is a very good idea, being especially mindful of courtroom staff! Determine where the electric outlets are located, note any sight-line issues, and prepare a diagram of the presentation equipment layout if you are going to be setting up equipment. Here is a short checklist of standard courtroom display equipment that I have at every trial:

- Laptop (Primary and Backup!)
- Projector (LCD 3,000+ Lumens)
- Projector stand or AV/Cart
- Audio Speaker (if audio is needed)
- Projector Screen
- VGA Cables
- Extension Cord
- Power Strips
- Gaff tape (to tape down cables)
- Misc. Items – Laser Pointer, Portable Scanner/Printer, wireless internet card!

Make sure you know how to setup, use, and troubleshoot your equipment! Or hire an outside service provider to handle the setup. The benefits of an outside equipment provider are that you don't have to worry about the installation and removal, plus you have someone to call if something malfunctions.



This is a typical courtroom presentation layout. Note there are individual monitors for the judge, witness, and counsel table. The projector screen is located directly across from the jury box.

B) LAY A FOUNDATION!

Knowing evidentiary rules is absolutely critical. Can your witness authenticate the exhibit? Does it contain hearsay? Is it relevant? These are questions and/or objections you need to think about prior to trial. Many judges will provide a trial-order that will contain specific instructions/rules on how to handle electronic evidence. Note in courtrooms where the witness has a monitor, an exhibit can be presented to the witness electronically without the need of a paper copy (*although a paper copy is often required for authentication or for submission to the court*). Many electronic presentation systems can be used to present an exhibit only on the judges and witness monitors. Once the exhibit has been admitted, the operator can publish the exhibit on the screen or monitor for the jury. This can save a lot of time and trips to the witness stand.

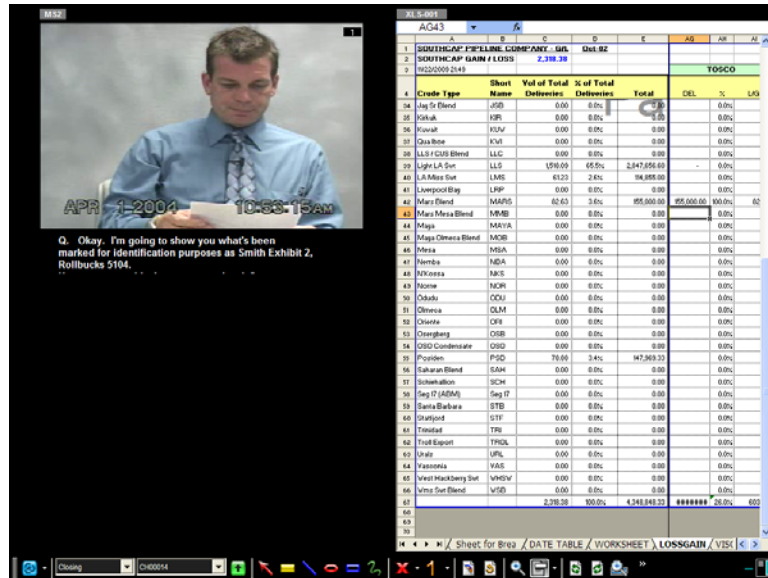
It is important to understand the procedure and rules regarding the admission of exhibits prior to publishing to a jury. There is a natural tendency to want to bring the exhibit up on the big-screen when it is being discussed. Make certain that it is admitted into evidence before publishing! An ideal way to deal with exhibits is to stipulate or meet and confer with opposing counsel prior to trial to determine which exhibits can be used. You may find a large majority of the exhibits can be stipulated to as being admissible by both parties.

C) CHOOSE THE RIGHT TOOLS

The two most common tools for the presentation of electronic evidence are Microsoft's PowerPoint and trial presentation software such as TrialDirector and Sanction. PowerPoint presentations work very well for Opening and Closing statements, while presentation software is often used for examinations and/or Opening/Closings.

The main difference between PowerPoint and trial presentation software is that the presentation software gives the attorney the ability to dynamically work with the exhibits. i.e. call up a specific document by exhibit number. PowerPoint's tend to be very linear and typically do not allow for the flexibility of 'jumping around' between exhibits.

Trial Presentation Software: has the ability to bring up an exhibit on-the-fly and call-out a specific portion of the exhibits, as well as high-light and annotate. In addition you can show multiple exhibits at once, which is an invaluable tool for comparing documents or linking evidence. Lastly you can present a variety of media, including deposition video and electronic exhibits in native format such as Excel and Word documents.



TrialDirector can be used to present video and a variety of electronic exhibits such as Excel and PDF files and other multimedia.

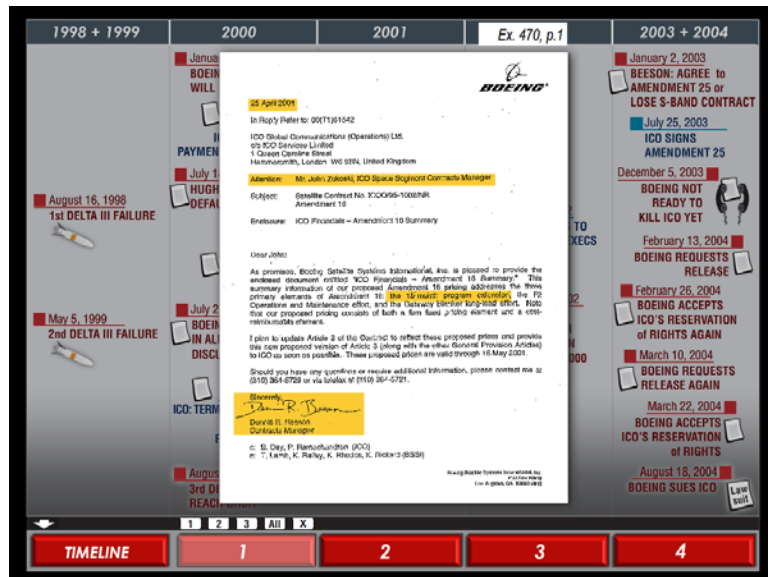
Blowup boards and paper pads: have not totally gone out of style. An exhibit or demonstrative printed on a foam-core has its place in the modern courtroom. Boards never go away; they always lurk in the corner of the room and can often make their way into the deliberation room. I recommend using boards for key exhibits and or key demonstratives. In addition to boards, a paper pad on an easel can also be highly effective.

Demonstratives: are almost necessities for any arbitration, mediation, or trial. Presenting arguments at trial is much like telling a story or putting on a play; there is hardly a case that doesn't warrant the use of visuals. They educate and can persuade. They can help you as an attorney to present your arguments and evidence visually; and they can also help your experts convey what can often be a very complicated concept in a visual way. There are many types of visual aids including static graphics, 2D and 3D drawings, 2D and 3D animations, and interactive graphics such as Adobe Flash. The

main benefits of interactive graphics are that they are incredibly flexible and can be presented in a non-linear dynamic fashion. A typical example of an interactive Flash demonstrative is a timeline. Interactive graphic gives the operator the ability to click on any event to instantly locate the supporting exhibit(s) to support that event. These interactive demonstratives can be a perfect tool for presenting evidence piece by piece in a very organized fashion.



This is an example of Flash demonstratives timeline, this timeline shows how a building is constructed, the project steps are listed on the left the operator can click on a step and that step will be illustrated.



This is another example of Flash Timeline, the operator can click on an event and the supporting exhibit will appear.

D) PLAY TO YOUR AUDIENCE

Choosing the right technology means you need to consider the type of jurors to which you will be presenting. Is the trial venue in a large city, or in a small rural town? Studies have shown that there have been changes in the learning styles of our society. People learn much more ‘visually’ today than in decades past. Knowing how to “break-it-down” and explain a complicated case or issue in simple plain-language is the key to educating and engaging the judge and jury.

I have operated TrialDirector at well over 100 trials, and in my experience I believe there is a universal truth that applies to all jurors: THEY DON’T WANT TO BE THERE! Anything you can do to increase the efficiency of presentation and speed up the proceeding will win you big points with the jury. Younger jurors especially have short attentions spans, so being able make good use of their time and to get through your evidence in an efficient manner can definitely help you win.

E) USE TECHNOLOGY, DON’T LET TECHNOLOGY USE YOU...

Technology is a powerful tool but you don’t want it to hinder your case. Avoid the “excuse us we seem to be having some technical difficulties...” moment at all cost! Examining a witness or orally making arguments to a jury is a full-time job; be very careful if you decide to handle your own presentation. While the one-man-show can be very effective, it can have disastrous consequences if something goes wrong and you’re the one standing in the spot-light with a frozen laptop... I highly recommend that you use a professional trial consultant or certified operator if the budget allows. A good consultant will come equipped with multiple laptops and should be well versed in operating and trouble-shooting the technology. This will allow you to focus on what is important-- pleading your case.

F) PRACTICE MAKES PERFECT

I can not express how important it is to rehearse your presentation; especially the technical elements. At a minimum, conduct a ‘tech-rehearsal’ of the Opening and Closing statement or key examinations. Ensure that whoever is going to be operating the presentation has some familiarity with the exhibits. Rehearsals are the best way to ensure a flawless presentation at trial.

In summary – as any veteran trial lawyer knows, things rarely go according to plan in court and these tools are designed to help you overcome and capitalize on those unexpected moments. The use of technology can help enhance the judge and juries understanding of the case; it can speed up the proceeding, and it can help you win.