

Technology in the Courtroom

Mistakes Made with Digital Presentations and Demonstrative Evidence

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Electronic presentation technology is a pervasive force in the world today. This is especially true in the field of law. An exceptional oral advocate has always had a powerful advantage in the courtroom, but today presentation technology brings an intensity and flexibility of its own to court. Visual Technology levels the playing field. Software applications such as Sanction™ and PowerPoint™ have penetrated the legal industry, allowing attorneys to achieve degrees of convenience, efficiency and persuasiveness never before imagined. Sanction, for example, is a management program that enables attorneys to organize and store thousands of documents in one place, with any page of a particular document retrievable with the touch of a button. PowerPoint offers the capability of consolidating video, key documents and enhancements, persuasive graphics, and audio into one presentation. Through the use of animation, PowerPoint furnishes the attorney with the ability to control the flow of information, as well as to direct the focus of the decision maker's attention.

It is also important to keep in mind that we are living in a society in which technology affects every aspect of our lives. What better way to teach and convince than by using presentation methods that are familiar to the decision makers?

It is common knowledge that demonstrative evidence should be routine in any legal dispute resolution and can significantly affect the outcome of a case. All too frequently, however, serious attention to the preparation and production of electronic demonstrative exhibits is delayed until shortly before the trial or hearing begins. As a result, the potential benefit to the case is diminished. A more practical approach is to begin the design and use of graphics in the very beginning of the case, making their development an integral aspect of case preparation. This leaves time for refinement and evaluation so that the exhibits will be on target and have the impact necessary to help win the case.

Many attorneys also fail to adequately weigh the risks versus the benefits involved in creating a technology-based presentation. A thorough analysis of the risks and benefits can be the difference between success and failure. Technology forces the attorney to prepare early. Digital presentations require the identification of key documents, what portions of those documents should be enhanced and what drawings should be scanned. It also requires that the selected key documents be imaged, and persuasive animated graphics be created. Once all of this is accomplished, everything must be loaded into the presentation software. These tasks necessitate a significant investment of time, well in advance of the legal proceeding. Regardless of whether there is a strong likelihood that the case will go to trial or that the case will settle, it is still worth considering the risks and benefits of creating a digital presentation. The presentation will undoubtedly serve as a valuable tool in litigation or settlement meetings. The majority of lawsuits settle before trial. However, cases do not settle until each attorney has a clear comprehension of the strengths and weaknesses of the opposition's case. Many times the other side is playing

the settlement waiting game, where opposing counsel will request a mutual exchange of demonstrative exhibits to be used during the trial. When one side comes to the settlement table with a powerful electronic presentation that is ready for trial and illustrates a keen grasp of the elements of the case, it is not unusual for opposing counsel to enter into serious negotiations for settlement.

In today's legal arena, many courts impose time limits on trials. Such restrictions may impact the trial by forcing the attorney to shorten the witness list and delete their associated presentation graphics. The order of proof may change as well. Since there is now less time, the attorney will have to rethink what evidence is necessary to establish certain points. For example, if there were no time constraints, several types of evidence might be used (i.e. emails, log books, letters, memos, drawings, etc.) to establish certain points. With an abbreviated trial, the list will certainly have to be reduced. This is where technology becomes imperative. Revisions to the presentation can be accomplished quickly while the admission of documents during trial becomes a much simpler task. The pace of both direct and cross-examination will accelerate, allowing more time for other areas of the case.

The popularity of presentation technology is growing at a rapid rate in the field of law, as large numbers of attorneys realize that they can gain a valuable edge through the use of technology. The basic steps that most attorneys already use in creating effective presentations have not changed. However, there are certain considerations that must be addressed when creating a technology-based presentation for trial or other methods of dispute resolution. This paper will explore the top mistakes made in the formulation and design of digital exhibits and presentations.

Misuse of slides:

It is important to choose technology that is well suited to the material being displayed. For example, the use of a monitor for review of documents can be impractical. The text is small, and depending on the quality of the scan, often unclear. Many attorneys use PowerPoint to display full-page documents on the assumption that anything digital is more persuasive. This is a strategic error. Jurors will read and remember a phrase that is enlarged on the screen. Displaying a full-page document on a monitor is not conducive to learning. Imagine watching a television program where the screen is filled with blocks of text accompanied by a voice over. How long would it take before the channel was changed?

A digital presentation is meant to be visually appealing and should not be viewed as electronic versions of blow-up boards. They should, however, be used to teach the jurors about the details in a document by highlighting paragraphs or phrases and then enlarging them. How is this different from using an enlarged document mounted on foam core board? It's all in the timing. Tell the jurors about the document they are about to see, then set the stage so that they understand the significance of the document that is about to appear. Then bring it up on the screen. Use the power of animation to emphasize key concepts or points. As the highlighted portion of the document zooms to full screen, the attorney can control the focus of the jury. In this circumstance, bigger is better, and smaller is perceived to be less significant. It is important to use the original unaltered document as the backdrop or source document, to anchor the discussion and for

the relevance of the exhibit to the case. Remember, a picture should be worth a thousand words – a thousand words should not be in the picture.

Wordy and Confusing Slides:

Each slide should address one fact or argument. A slide that attempts to focus on more than one issue will confuse the viewers. Rather than decipher its meaning, jurors will simply discount it. Titles of charts should define the question that the attorney intends to answer. If a graphic or slide does not educate, and simply looks attractive, it should not be used. The purpose of presentation slides is to communicate facts efficiently. Meaningless pictures or phrases waste valuable learning energy. When it comes to digital presentations and exhibits, keep it simple.

Electronic exhibits are like road signs. Imagine driving down a highway at 65 mph and seeing the following sign: *“The best exit to take to 84th Street is coming up in approximately 4.2 miles on the right side of the road”*. Even if you could read the sign, would you? The sign *“84th Street. Right lane, 4.2 miles”*, works so much better.

Electronic exhibits should give direction and get to the point. Extra words waste time and blur the memory.

Fonts: Think again about the revised and simplified version of the highway sign, but now imagine it was written in a decorative type face. Would you be able to read it? Not likely. Keep the slides clean, short and simple. Use sans serif fonts, such as Arial or Helvetica. These are clear and comfortable to the eyes.

Color: Color has subliminal meaning in our society; it is a language of its own. You would never expect a stop sign to be blue or purple. Green is go, yellow is

caution, red is stop or danger. Imagine a bar graph with seven rainbow colors, one for each bar. Would the colors indicate anything at all to the jury? Definitely not. In contrast, had all but one of the bars on the graph been green, the other being red, it would be clear that the red bar represents something significant.

Information Overload:

One of the most important elements involved in designing an electronic presentation is deciding “what” information should be included. Technology-based graphics should be driven by a desire to influence the decision-making process, and facilitate memorization of key facts and issues. While the slides should not be driven by graphic design and artistry, they should retain a manner of good taste, and an appropriate color scheme. The role of digital graphics is to enhance the message content and help jurors memorize key points. Too much information hinders memorization, and the learning process. Demonstrative aids should serve as a memory-recall device. After being exposed to the presentation, jurors should be able to close their eyes and recall information by remembering one of the visual exhibits. Once the decision has been made as to what information is important enough to be presented, the principle known as the *smallest effective difference*¹ should be applied. This basically holds that content is king. Anything that appears on a chart or graph, such as lines or colors, should be inferior to the content. For example, consider a slide that consists of a table, replete with numbers and dates; the lines that make up the table should not be too bold, as they will compete with the information that the table was designed to convey in the first place. This principle applies to words as well. Using too many words will crowd the slide and

compete with the important language that comprises the overall message. Identify the informational needs of the judge or jury, and plan the presentation graphics carefully.

Good design adds clarity, rather than complexity, to the overall presentation.

Technology Overkill:

One of the biggest errors that attorneys make is overdoing their presentations with too much technology. When approached in the correct manner, electronic presentations are one the most powerful and persuasive tools available today. However, conventional boards still have their place. Many times, a particular computer generated exhibit is so important, that it becomes necessary to produce it as a large demonstrative board, which will serve as a point of reference later in the trial. Computer-based graphics that are converted into boards are referred to as “anchors,” because they establish essential information in the minds of jurors by means of repetition. Typically, site plans, timelines and organization charts lend themselves to being developed into anchors, because they are continually referenced throughout the trial.

Generally, PowerPoint presentations are used during opening statements and closing arguments, with conventional boards and animations being used during direct and cross-examination. The reasoning behind this is that PowerPoint allows the presenter to animate, organize the order, and control the flow of the information being presented.

One of the most powerful features of electronic presentations is the ability to teach slowly and methodically. A good story unfolds one fact at a time. Each new fact should build on the credibility of the last, and support the overall message, giving the jurors time to absorb each element of the slide. Animation lets the presenter control the learning

process. For example, during opening statements, a organization chart might be used to educate the jury about the relationship between the Owner, Architect/Engineer, Contractor A, Contractor B, Contractor C, Subcontractor D and Subcontractor E. Animating the slide will allow the presenter to layer each party in, one at a time, in the desired order of introduction. Once the foundation is laid, the final version of the slide, with the relationships completely revealed, can be produced as an anchor exhibit board for use during the trial. If presented in this manner, the jury will have a firm understanding of the logic behind the exhibit. Avoid the temptation to get carried away with fancy animations and effects just because the technology allows you to do so. At the design stage of presentation and slide development, the theme should be simplicity. The need for animation will become clear as the presentation comes together. Find what is referred to as a technological “sweet spot”. This is a comfortable balance between persuasive technology, effective text, and demonstrative boards. Remember... the *smallest effective difference*.

Computer Animation:

Once the high tech playground of Walt Disney and the Silicon Valley, computer animation is now affordable in most cases and is being used more frequently in the courtroom. Animations can be used to graphically demonstrate how and why an accident occurred, how a fire spread through a building, how a construction project was completed, or how a piece of equipment or a structural member of a building failed (just to name a few). A well done animation can put the judge and jury into the driver’s seat of a piece of construction equipment, in the shoes of a witness watching a building

collapse, or behind the eyes of the engineer investigating why it collapsed. It can illustrate two alternative theories about the event at issue and how both theories would have led to the same or similar results. If there are varying accounts of what happened, it is sometimes possible to show why your opponents theory of what happened is wrong by putting their assumptions into the animation and showing the resulting images.

There are three types of animations: models, demonstrations and reconstructions. A computer **model** depicts what an object looks like and is built or modeled using the same drawings and data that were used to construct the original object. A computer **demonstration** shows how an object or piece of equipment works. This type of animation does not delineate an expert's opinion in the case; it is educational or tutorial and is used to provide the judge and jury with a comprehensive understanding of the process. A **reconstruction** shows how the events at issue occurred. This is the most controversial type of animation and usually depicts the experts opinion of what happened and why. A computer animation has great versatility as a litigation tool. It offers the attorney flexibility in displaying the theory of the case. As new data appear in the case or assumptions change, the animation can quickly show the effect on the outcome. Animations are also a very useful tool in settlement. They help the other side see the points that would be made in trial.

Not all cases however, require the use of computerized animations to explain scientific or other events. There are two things to consider when contemplating using computer animation; first, is the cost verses usefulness. While it is true that the cost of computer animations has fallen in recent years, they are still somewhat expensive. It should be determined whether the potential benefits outweigh the production costs.

Second, will there be any prejudicial backlash against the case? Unnecessary use of computer animation may actually offend jurors, who may find such animations too theatrical. Take the time to carefully assess whether or not other less costly or less theatrical methods of presenting the evidence would suffice and have equal or more impact. There have been many cases where computer animations were designed and produced only to be found inadmissible at trial. Images can be easily manipulated and the potential for misleading the jury is ever present. Often time's animations are created carelessly depicting different circumstances than those surrounding the actual event(s).

For example:

1. An animation is created to show the sequence of pipe installation and interferences that a contractor encountered while renovating a power plant, but mistakenly depicts interferences that did not exist at the time the piping was actually installed.
2. The progress of a construction project is animated using incorrect data or schedule updates.
3. A vehicular accident that occurred at night or at dusk is shown in bright sun on the animation.

In many cases such as these, the animation depicts something vastly different from what really occurred making it largely irrelevant if not misleading and thus inadmissible.

Rehearsal and Testing:

An electronic presentation should be built around the attorney who will be presenting it. The attorney must be comfortable with the design or personality of the

presentation. Just as people have different styles of dressing and feel awkward in clothes that are not consistent with their self-image, the presenter will appear awkward delivering a presentation that does not integrate well with their personal style. The most effective way to combine personality and technology is practice. By continually rehearsing the presentation, any portions that do not interact with an attorney's particular style will make themselves apparent. Rehearsal will give the presenter an opportunity to refine these problem areas and become more comfortable with the presentation as a whole. In addition, it should be understood that a technology-based presentation affects where the attorney stands, and how he/she interacts with witnesses, the judge and the jury. These are issues that may seem like technicalities, but they most certainly impact the overall feel of the presentation and should not be overlooked.

Testing the presentation on a neutral third party or mock jury can also be an excellent way to get feedback on the presentation. This allows the attorney to verify that the presentation is achieving its desired effect, lets the attorney work out any pacing issues (where to stand), and ensures readability of the slides (font size, color, etc.) The process of creating an electronic presentation is somewhat like a new friendship. The more you get acquainted with it, the more comfortable you will be with it, and the more powerful it becomes.

Court Rooms have limitations:

The preparation for actual trial presentations goes far beyond taking a laptop and exhibit boards to court. Technology considerations must be addressed to ensure that the presentation has the maximum impact on the jury. The best presentation will not be

effective if the jury can't see it clearly. Reviewing and planning for the physical courtroom and understanding the trial environment is critical for success during trial. Some images will not be impressive on the small monitors used by the jurors. Can the jury see the presentation from all lines of sight? The size of the room, location of the monitors and/or screen, electrical wiring, lighting and equipment are all part of the trial environment and must be considered early on.

Murphy's Law will rule:

Anything that can go wrong will go wrong, especially when it comes to technology. While the reliability of technology has improved dramatically over the past few years, always prepare for the worst. Back-ups for all hardware such as projectors, laptops, CD-roms, DVD drives, as well as duplicate informational CD's are an absolute must. Additionally, there should always be a plan B in the unlikely event that the back-ups fail. In this case, Plan B would be the advance preparation for the worst case scenario, by rehearsing the presentation as if there were to be no visual aids whatsoever. An exercise such as this can only strengthen the delivery of the presentation.

Conclusion:

Electronic or digital presentations offer unparalleled communication power, when the presentation and exhibits are geared toward the learning, listening and communication styles of the jury. Using advanced technology during the trial suggests skill and competence. However, keep in mind that the principles of persuasion are not about the technology alone, but rather a combination of technology, credibility, visualization, and memorization. Within this framework, technology can be a powerful tool to enhance

persuasion. Carefully planned legal strategy and strong content remain the hallmark of a solid case. Carefully planned visual strategies and compelling graphics are the hallmark of a persuasive electronic trial presentation. It is the combination of the two that win legal arguments and trials.

¹ Tufte, Edward R. *The Visual Display of Quantitative Information*, Graphics Press, Chesire (1983).

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