

BEST PRACTICE TIPS FOR ELECTRONIC TRIAL PRESENTATION



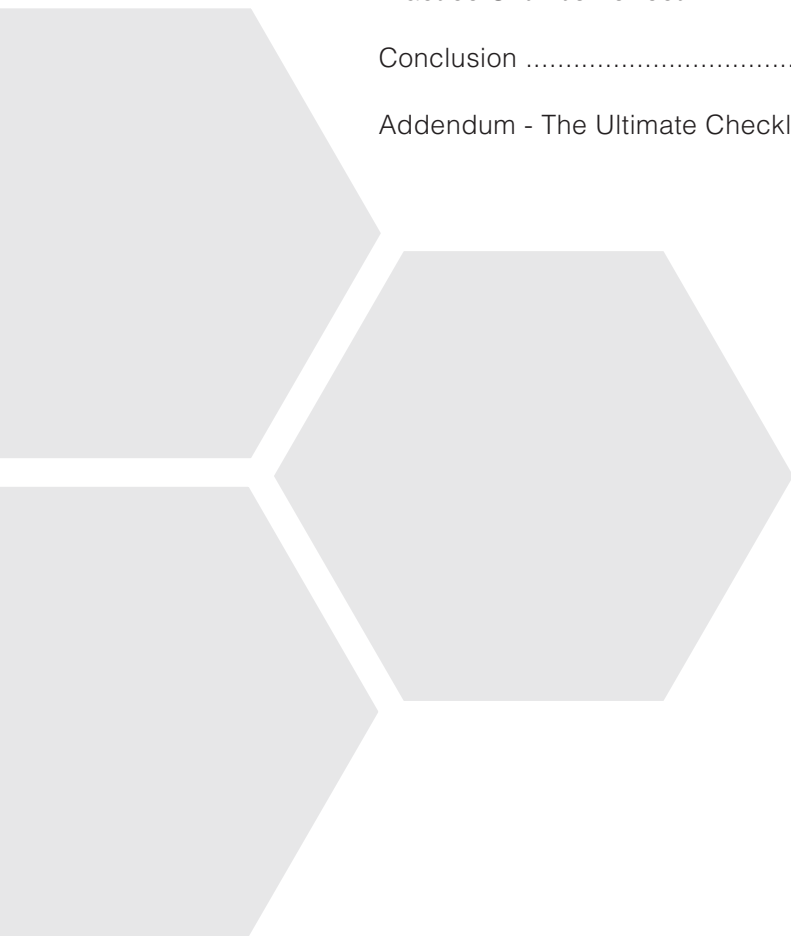
WHITE PAPER

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Table of Contents

When to Use Presentation Technology	3
What You Need for a Courtroom Presentation	3
The People	4
The Courtroom	4
The War Room	4
The Equipment	5
The Software	6
Preparing Your Exhibits	8
Effectively Working with Trial Consultants	8
Practice Until It's Perfect	10
Conclusion	11
Addendum - The Ultimate Checklist	12





BEST PRACTICE TIPS FOR ELECTRONIC TRIAL PRESENTATION

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.



While not yet as ubiquitous as a Hart, Schaffner & Marx suit or a power tie, the steady impetus of presentation technology in the courtroom is gaining speed. Already, those firms and attorneys outfitted with presentation technology enjoy a competitive advantage; soon, it will be as imperative as a telephone.

What do you need to know about presentation technology to make it work for you and your clients? We asked our trial consultants to share some insights based on their experiences on the courtroom's front lines.

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.



What You Need for a Courtroom Presentation

We'll discuss the hardware technology a little later in this article, but first, let's talk about the foundation of any courtroom presentation – the people and the protocols.

The People: 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 or an associate for the role of courtroom presenter, 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 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.

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 you to focus on the trial and not be concerned about the mechanics of the technology.



The Courtroom: Another consideration is the courtroom itself. Many but not all modern courtrooms are configured for electronic presentation. You may need to provide the hardware components of the presentation: monitors, projectors, speakers, wiring, and networking, to name a few. You do not need to buy all of this hardware. It is possible to rent the equipment for a specific trial, sometimes from the court itself. The technology must blend effectively with the décor of the courtroom so that it does not detract



from the message being presented. Cables strewn haphazardly around the courtroom are not only a distraction to the jury, but they present a safety concern as well. And don't forget to confirm your technology intentions with the judge. Each judge will have biases regarding the use of technology in the courtroom, and you need to be able to address those concerns.

The War Room: A War Room is critical to your success when using trial presentation technology. Especially when you are first adopting electronic presentation technology, extended practice is advisable. Use the War Room as your "rehearsal hall."

An ideal war room is a technological duplicate of the courtroom, where the trial team can comfortably rehearse, gather exhibits, and prepare witnesses 24 hours a day. Because redundancy may be important should equipment fail in the courtroom, using a second computer (a duplicate of the courtroom system) in the war room is ideal.

Make sure that any limitations of the courtroom are matched in the war room. Is there a room in the courthouse that can be used for mid-trial tasks? Can you set up printing, copying and Internet capability there? Is it a lockable room so you need not be concerned about equipment left there overnight? You may want 24-hour-a-day access to your war room, so the courthouse may not be your best choice. When working out-of-town, the war room should be as close to the courthouse as practical. Use local specialists to equip the war room, including setting up secure, high-speed Internet access.

The Equipment: Specifying the ideal hardware configuration for supporting electronic trial presentation is difficult. Not only do hardware capabilities change on nearly a daily basis, but courtroom presentation technology continues to rapidly advance. Also, your needs will likely vary from case to case. (See inset 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,

Recommended Courtroom Presentation System (minimum)

- Pentium™ 4 2.4Ghz Processor (or better)
- Windows™ XP Professional or Vista
- 1024 MB RAM (More is better)
- 64MB+ AGP Video Adapter
- Internet Explorer 6.0 (or higher)
- Dual Monitor Output
- SVGA Separate Monitor (1280 x 1024) at 24-bit Color (True Color)
- Sound card and speakers (required for Audio/Video functions)
- 120 GB (or more) available hard disk space (to store video and document files)
- DVD-Read/Write Drive
- 100MB (or better) Network Adapter



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 who will be pleased to have your powerful hand-me-down.

Whenever possible, use dual monitors for your presentation computer, taking 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.

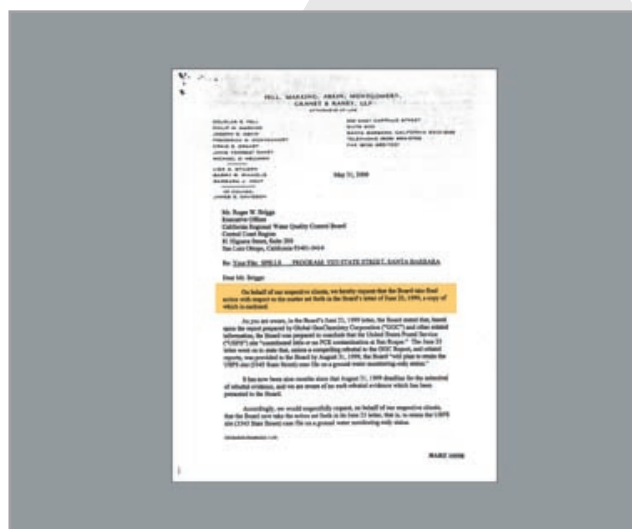
Make sure up-to-the-minute backups of your data are maintained should something go awry. Your presentation is likely to be contained on a single computer, typically a laptop. What would happen if the computer were dropped and damaged, or worse, stolen? For about \$150, you can buy an external hard drive 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.

The Software: Your 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 inData TimelineXpress®.

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

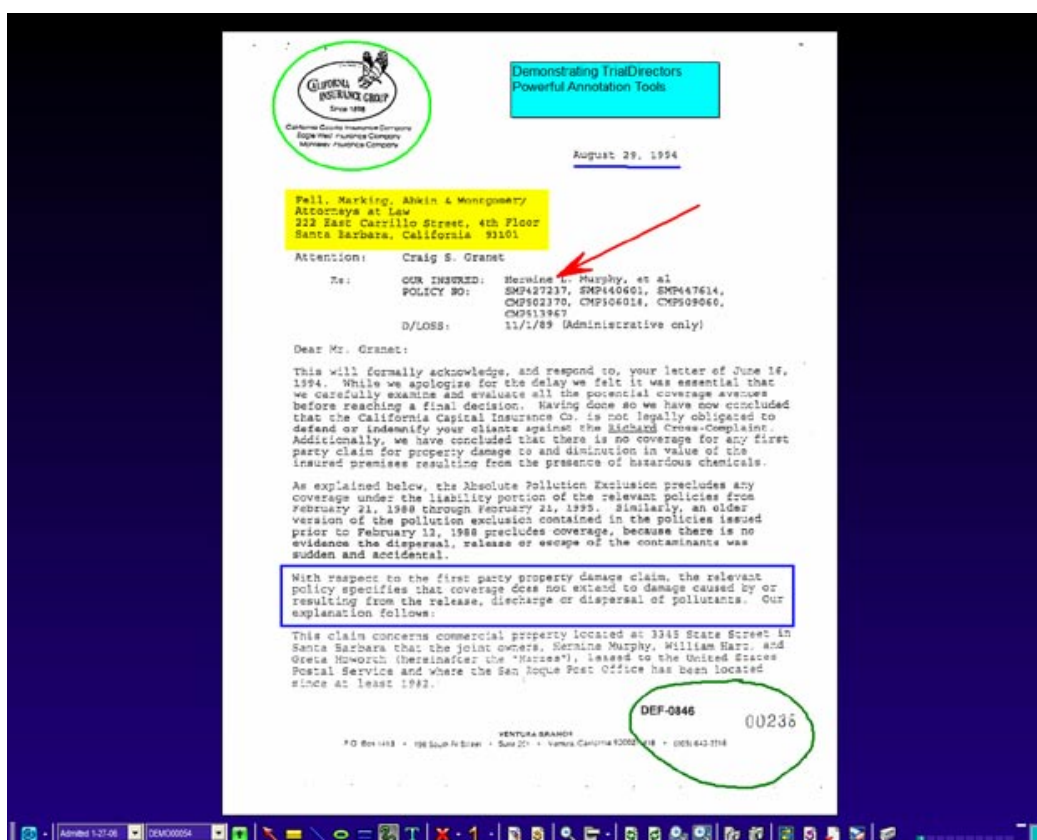


PowerPoint Presentation



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, such as TrialDirector®, 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.



TrialDirector by inData Corporation

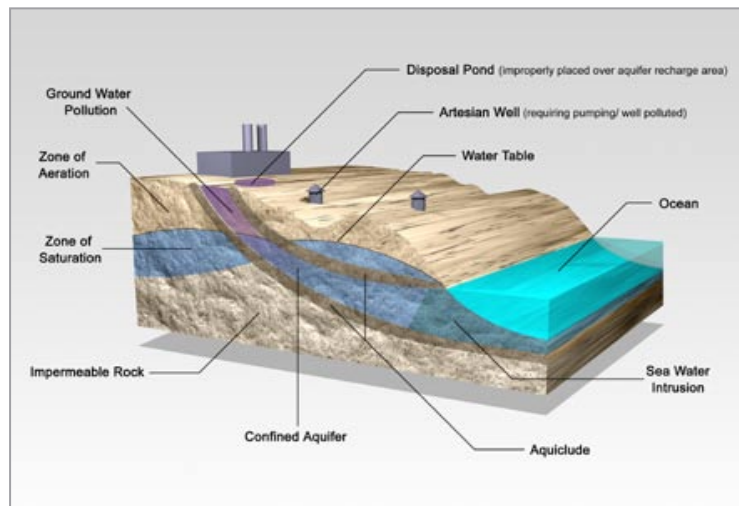
Using software specifically developed for use in the courtroom, you can work from a prepared presentation yet seamlessly adapt as needed. Embedded tools in the application allow you to quickly locate and extract impeaching testimony from video depositions, or recall and highlight exhibits. Some trial 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 changing 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.



Preparing Your Exhibits

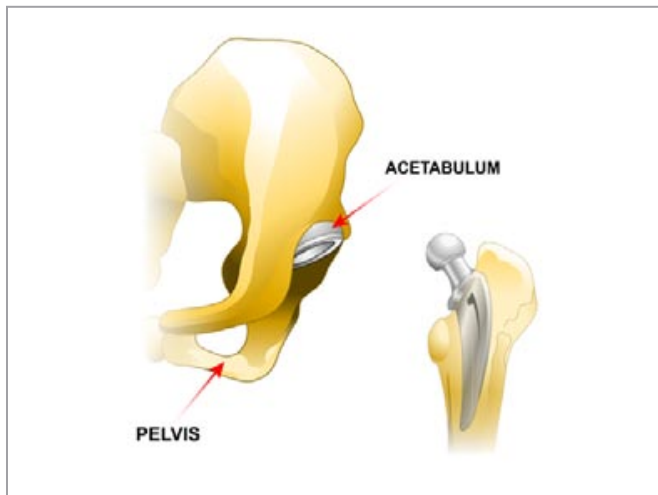
Anything that can be displayed on a television screen can be displayed during your electronic presentation. In addition to simple images such as photographs or pages of text, electronic exhibits can include reenactments, videotaped expert testimony, animations, and computer simulations.

To take advantage of the technology, video depositions should be encoded and synchronized with the transcript text (“synched”) so that clips can be quickly created at trial. Need to educate a jury on a point of physics? Consider retaining a college professor to do a five-minute video demonstration. An advantage to this kind of presentation is that it can be recalled readily at any time to emphasize a point or refresh the jury’s recollection.



Cross Section Diagram

Determine how you want to present your case visually. Do you need to re-enact the scene of an accident? Do you need to simplify complex engineering schemas? Or are you simply focusing on several contract clauses?



Medical Illustration

In some cases, such as when you need detailed, specific images or animations, you may find it best to use graphic designers or illustrators to prepare exhibits. If one good picture is worth a thousand words, how much might a good animation be worth? Animations and other such demonstratives are also easily retrieved for emphasis or review, often an advantage at trial. In this situation, it is best to use a designer who specializes in courtroom presentations. You will find that most courtroom consulting firms either have such individuals on staff or have a working relationship with trustworthy designers.



Effectively Working with Trial Consultants



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 you prepare witnesses, plan your presentation strategy, organize your trial notebook, and present your case at trial using trial presentation software. If you are 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 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 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.

Tips for Trial Presentation

- › Get your technology feet wet by using it on a small case, arbitration, or mediation
- › Practice, practice, practice...
- › Know the limitations and capabilities of your software
- › Allow time for the jury to absorb the information
- › Keep it simple in spite of the temptation to fully utilize all the available bells and whistles. Remember: The jury isn't as familiar with the case as you are.
- › Work out the communication between the presenting attorney and the courtroom technologist.
- › Make sure you have two of everything
- › If you're on an out-of-town trial, make sure you have original software disks available should you have to reinstall software



Once a consultant is retained, what should you expect your trial consultant to do? Here's a list of some of the essential 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 tear-down 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

Practice Until it's Perfect

Rehearse your opening and summation with your presentation assistant until you are completely in synch. Develop and memorize your naming conventions and any special terminology related to the case. Since one of the principal advantages of electronic presentation is the ability to quickly react to changing circumstances, daily trial reviews in the war room allow you to respond to events effectively.

Always, always do multiple test runs with the actual hardware, software, and humanware that will be used at trial. Smooth, confidently presented information conveys additional legitimacy. The message is what is important in the courtroom; practicing with your courtroom presenter will ensure that the jury is not distracted by a ragged presentation.



Conclusion

Experienced litigators know that winning even simple cases requires preparation to effectively bring the jury to the point where they understand their client's point of view. Good electronic trial presentation looks simple and seamless in the courtroom, but in the background, it takes preparation to achieve the optimum effect – a winning presentation.

About the Author



Derek Miller is the CEO and President of inData Corporation. He has been involved in the management and presentation of information for over 17 years. 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). He has also served as a special consultant to the U.S. Trustee in large bankruptcy cases. Mr. Miller has spoken at multiple American Bar Association functions, accredited seminars and luncheons, and has been quoted for numerous magazine articles nationwide.





Addendum - The Ultimate Checklist

- Get the court's permission in advance for your electronic presentation. Try to get a feel for the judge's biases and concerns about the technology and adapt accordingly.
- Evaluate the courtroom for built-in support. Can you rent equipment from the court instead of bringing your own? Can you plug in to the court's audio, or should you bring your own audio equipment?
- How will the courtroom layout affect your equipment placement? Working with the court staff, visit the courtroom site in advance of the proceedings to identify any issues with lines of sight, making sure all concerned have good visibility. Identify any overcrowding or lighting issues.
- Allow time for courtroom setup, before the first day of trial if possible.
- Find out from court staff whether the equipment can be left in place from day to day or whether, due to other proceedings, accommodations will have to be made each morning of trial.
- Is opposing counsel using technology? Can you share equipment?
- The bailiff, the court clerk and others on the judge's staff are your best friends. Develop a relationship with them, helping them overcome any concerns they may have about the technology.
- Do you have your spare equipment and backups ready to go? Have a backup plan for both hardware and data.
- Know the location of the nearest 24 hour copy center and office supply stores. If necessary, for out-of-town trials, set up appropriate accounts.
- Locate your hotel and war room as close to the courthouse as possible.
- Synchronize your trial and war room computers nightly.
- Make sure you have ready access to specialists if crises arise. You can't bring everyone with you, but you can know where help is located if you need it. (Alert those specialists to your trial schedule so they can be sure to be available for you.)
- Retain a caterer for meals in the war room, especially for tight lunch hour schedule, so your meal is waiting when the team arrives. Make sure they have a variety of types of food so the trial team is not eating the same things every day.
- Arrange appropriate transportation for people and technology to and from the courthouse.
- Don't overdo the technological presentation. There will be times when it will be appropriate to have a flip chart and markers available. Using a variety of presentation techniques will keep the jury awake.
- Be sure and make a reservation at your favorite restaurant for the victory dinner!