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Presentation on

**“THE VISUAL TRIAL: USING COURTROOM
TECHNOLOGY TO PERSUADE”**

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DISCUSSION NOTES AND DETAILED OUTLINE

This presentation will focus on the unique issues involved in the use of courtroom technology in the prosecution of criminal cases. It is designed to introduce the prosecutor to the many ways to prepare and present digital media during trial. The presentation will briefly address the use of media editing software and then address how presentation software can be used during criminal trials, from evidence presentation, to closing argument. The presentation will then include demonstrations of actual trial technology presentations.

OUTLINE OF PRESENTATION

I. Why Should I Be Using Technology During My Trials?

There was a time not so long ago when all the prosecutor had to do was call a few witnesses in a trial to testify to what they saw or heard. If the witnesses were believable, typically the jury would convict. However, today's prosecutions are much more complex than they were just 20 years ago. There are several reasons for this phenomenon.

First, the last 20 years has seen incredible advances in the use of technology and the forensic sciences as a means of investigating and proving crimes. Think about some common everyday tools that were virtually non-existent or were not widely used 20 years ago. While computers have been in relatively wide use for some time, the advent of the Internet became popular and widely-used within this time frame. With the Internet came a new wave of digital communication via web sites, e-mails, instant messaging, social networking pages, and the like.

Like the Internet, cellular communications have become commonplace within the last 20 years. Gone are the days when mobile phones were reserved for the wealthy executive types. A cellular phone is as much a part of our lives today as a morning cup of coffee is to a coffee drinker. Cellular communications have not only fostered a new breed of telephone talkers, "text messaging" has also become a fashionable and convenient way to communicate. Also, for most cellular phone users, cellular communications are now commonly linked with Internet services. Smartphones are now the norm. Instant access to people and information is a reality.

Second, various law-related entertainment programs, such as the *CSI* television programs, present criminal investigations and prosecutions in a way that causes viewers to believe that all crimes must contain, and can be solved by, some sort of scientific evidence linking the defendant to the crime. We all know that this is not the case in real life. We handle many cases, including violent crimes, which contain no useable scientific evidence at all. We are commonly forced now to present negative scientific evidence – e.g. to explain the *lack* of fingerprints at a crime scene or on a physical piece of evidence – during trials to respond to defense arguments and to answer the jurors questions about the availability of scientific evidence.

Third, we currently live in a digital age with instant access to all sorts of personal digital information. Just a few short years ago, we kept our schedules on our PDAs/cell phones. Digital cameras allowed us to instantly see our shots and decide whether to keep them, or delete them and take another. We kept our friends' and associates' contact information stored in our cell phones. We carried around with us our entire music libraries, as well as photos and videos, on portable digital media players. Now, we carry all of that information and ability in a single device.

The end result of all of these technological advances is that today's juries are made up of ordinary people with significant exposure to technical instruments. They have increased

exposure and thus increased expectations of what evidence is available to prove an offender committed a crime. As a result, the way we try our cases needs to change with the times. Scene photographs can now be displayed in high-definition on large screens. Surveillance video and/or audio can now be controlled from a laptop computer rather than separate video or audio players. Legal documents such as *Miranda* waivers or consent to search forms can be displayed in digital format for jury observation during testimony rather than at the close of evidence.

Criminal trials are no exception. Indeed, they call for even more attention and preparation. Because of the possible punishment, criminal cases are subject to closer scrutiny than other cases not only by the courts, but by jurors as well. When the risk of lengthy incarceration is an option, you can bet that jurors will carefully analyze the evidence and arguments because of the catastrophic consequences of a mistake made during deliberations and verdict. Thus, criminal cases present even more demanding expectations by these same jurors.

At the same time, we need to satisfy these heightened expectations if we want to succeed in our prosecutions. A trial presentation using computers and evidence presentation software satisfies the jury's need for science, even if the evidence itself does not come in the form of scientific evidence. It produces an extremely effective and compelling presentation that makes traditional trials look like something from the history books. Furthermore, when used properly, by combining the visual image with the spoken word, the use of evidence presentation software greatly enhances the chance that the members of your jury will remember your evidence when it comes time to deliberate. Studies have shown that a visual used during testimony or argument is more likely to be remembered than the spoken word itself. Through the use of evidence presentation software, the prosecutor can gain an edge over the defense and give the jury more compelling presentations.

II. Courtroom Technology and the Technophobe

Despite the significant advances in the everyday use of technological devices, there are still many prosecutors who shy away from the use of computers at all. Even if they are comfortable using them in the office, they would never consider using them in court. Unfortunately, as the times have changed, this is a mindset that must likewise be changed. Computers are in wide use in virtually every aspect of our lives. There is no reason they should not be integrated into the courtroom. The proper use of courtroom technology, and I want to stress the “proper” use of courtroom technology, gives the user a significant advantage over the non-user. This very fact has been recognized in publications dealing specifically with the use of courtroom technology.¹

Evidence presentation software will allow the attorney to store and organize all of the digital evidence, or digital copies of evidence, on a single laptop or other storage media. Images can be called up, video can be played, and audio can be heard, in any order the

¹ See, *Effective Use of Courtroom Technology: A Judge's Guide to Pretrial and Trial*, Federal Judicial Center, p. 50, which discusses the potential advantage the user of courtroom technology may have over the non-user.

attorney desires with a simple mouse click. No longer will you have to repeatedly walk up to your witnesses to show them photographs, documents, or diagrams.² No longer will you have to take a compact disc or DVD, insert it into the disc drive of your laptop, wait for the laser to read the data, browse for the file you want to play and wait for that file to load before you navigate to the part of the file you want to publish. Instead, you lay the foundation for the exhibits in a few questions and then display them almost instantaneously on a screen in the courtroom during the testimony.

Except for the use of real pieces of physical evidence, like a gun, or bloody clothing, presentation software will allow you to present a hands-free closing argument to the jury, complete with photographs, video, audio, and jury instructions. This technique allows you to speak more intimately to the jury, rather than concentrating on sorting through a pile of items and pulling out the right one at the right time during your argument.

That being said, if you are a technophobe, the time has come for you to start integrating the use of computers and evidence presentation software into your trials. Let's face it, criminal cases require a significant amount of your time and attention. At the same time, the defense will be investing a significant amount of time and attention to the criminal case. Clearly, the stakes are high. You owe it to yourself to stay a step ahead of the defense by presenting the most effective and compelling presentation available. Moreover, with the stakes as high as they are in criminal cases, you owe it to the citizens of your government to present the most effective and compelling evidence and argument possible. The use of courtroom technology, when used properly, to enhance your courtroom presentation is the way to achieve these goals.

III. Courtroom Technology and the Government Budget

In today's economy, everyone is looking at ways to reduce overhead while increasing production. The Government is clearly no exception. With any type of expenditure, there must be a weighing of the cost of the product sought with the benefit to be received by the use of the product. Whenever the subject of media editing and evidence presentation software is brought up, the casual computer user might quickly think that the process is way too costly to undertake. One might easily assume that the proper use of courtroom technology requires the use of expensive editing programs, and costly presentation software. These assumptions are far from the truth.

This discussion will start out with the fair assumption that computers, and especially laptop computers, are in use or are available through your governmental agency.

² By no means do I advocate the elimination of hard photographs, original audio/video tapes, discs, or paper documents during trial. Rather, if a digital copy can be made of any piece of evidence, the original item can and should be marked as an exhibit, but the digital version should be displayed during the testimony so that the jury can see/hear the evidence at the appropriate time, and concurrent with the appropriate testimony. This may require some pre-trial discussions with defense counsel and the court prior to witness testimony to allow simultaneous publication of exhibits before they are formally "admitted" into evidence. In any event, the original photographs, tapes, discs, documents, will still be submitted to the jury for deliberations but through simultaneous publication you will have greatly increased the jury's understanding of the evidence well before closing arguments and deliberations.

A. Media Editing Tools

There are many audio and video editing tools available. Some of them can be quite costly. The more expensive programs typically come with many features you will never need for your courtroom presentations. Fortunately, there are also many free media editing programs available for download via the Internet.

1. Photographs and Digital Images

There are times when you want to perform some editing to photographs or other digital images. Perhaps your digital photographs are too dark. Or perhaps there are objects in a digital image that the jury is not supposed to see. Most computers have some form of picture editing software on them. With these programs, the user can easily brighten photographs or can crop out parts of the image which are not relevant to the case. The Microsoft Office® Suite of programs, for example, includes **Microsoft Office Picture Manager**³ which can be used to crop and resize digital photographs and images. **Irfanview** is a free download and likewise can be used to resize and crop photographs and other digital images.⁴ **XnView** and **NConvert** are yet another pair of very good free programs for editing photographs or other digital images.⁵

2. Audio Files

As with digital images, there may be times you want to edit digital audio files. Perhaps they contain more audio information that you wish to present at trial. Or perhaps, there are objectionable portions of the audio file that need to be redacted. When you have audio files that you need to edit, **Audacity**® is a very good program and is available as a free open-source download.⁶ With Audacity® you can make smaller clips from larger audio files, boost the volume of a low level audio recording, eliminate background noise in an audio file, or insert a tone or white noise in place of objectionable material. Audacity only accepts certain audio formats. You may need to download a free audio format conversion tool if your audio file is not the right format for Audacity.

While designed as a video editing program, **Windows Movie Maker**, a program found on all Windows® computers, is also a useful program for editing audio. This program contains fewer features than **Audacity**® but does allow basic audio editing. You simply import your audio file into the program, drag it into the audio timeline, and start editing.

³ This Microsoft product is found in the Microsoft office suite of programs through Office 2010, though with varying names. Microsoft has unfortunately removed it from its suite of programs in Office 2014.

⁴ Irfanview is available at <http://www.irfanview.com/>

⁵ Both of these programs can be found at www.xnview.com

⁶ To download this program, visit <http://audacity.sourceforge.net/>

3. Video Files

Sometimes, due to the lack of uniform standards and the vast number of private companies making video software, we get digital video files in a variety of not-so-user-friendly players of programs. Proprietary players often have functions and features which do not translate well to the courtroom presentation. Trying to publish the portion of the video that you want the jury to see can be cumbersome and time-consuming. In these instances, it is often better to “capture” the video, edit the video, and then use it in evidence presentation software. For video capturing **CamStudio™** is a great tool and is also a free download.⁷ This program is especially useful for converting video from a proprietary format to a more user-friendly format – i.e. AVI – which can then easily be used in evidence presentation software. The program will allow you to capture an active window with video, or even a full screen video.

Another great video capturing tool is **FastStone Capture**.⁸ Not only will this tool capture video playing on your screen, you can use it to capture entire scrolling web pages as a single image.

Another great video editing tool comes with virtually all Windows® computers. This program, called **Windows Movie Maker**, allows the user to make smaller video clips from a larger digital video file. It also allows the user to create still images from a video source. The user can also edit out objectionable portions of a video file, or take video from multiple sources and create a movie-like video. The program contains many effects to make your editing look professional. To find this program, go to the Start Menu on your computer. Go to “All Programs” and look for Windows Movie Maker. Most newer computers (Windows 2007 and later) contain a newer version of Windows Movie Maker. The older version (2.6 for Vista) of Windows Movie Maker is considerably more versatile than the current Windows Movie Maker Live and is still available as a free download.⁹

Another effective video editing program called **Virtualdub** is also available as a free download.¹⁰ Virtualdub not only allows the user to edit the video, it allows the user to change the speed, or “framerate” of the video. This is especially useful for some surveillance videos that playback at faster than normal speed. With a quick adjustment, the video can be changed to playback at normal speed.

⁷ This program is available at <http://camstudio.org/>. Simply, video capturing allows the user to “capture” any video playing on a computer screen and save it as a file that can then be used in other editing and/or presentation software.

⁸ FastStone Capture can be downloaded from <http://www.faststone.org/FSCapturerDownload.htm>

⁹ <http://www.microsoft.com/en-us/download/details.aspx?id=34>

¹⁰ This program can be downloaded from <http://www.virtualdub.org/>

B. Presentation Software

The above programs are good for media editing. However, editing is but the first step in the use of courtroom technology. Once the media is edited to your satisfaction, it needs to be presented in presentation software. When it comes to evidence presentation software, there are several options available to the trial attorney. The most widely used example of this is **Microsoft PowerPoint®**. While not free, PowerPoint® is included in the Microsoft Office® Suite which is a popular and widely used bundle of software.

Another program which is very useful for courtroom presentations is **Sanction®**.¹¹ In cases which have video statements, this program allows the user to integrate the video with a scrolling transcript on the same screen, preventing the dilemma of having a juror be forced to choose between watching the video and the demeanor of the defendant, or looking down and reading from a provided paper transcript. Sanction puts both on one screen so the jurors can look at the video and the transcript together. Also, by defining start and stop points in a video, the program allows the user to create smaller “clips” of the video for playback in court without having to make new, and space consuming shorter video files from a larger video. By giving the “clip” a user-defined name (as short as a single character or letter), these video clips can then be called up and played in any order with a simple keyboard command. This function is very effective for cross-examination as well as for non-linear closing arguments. However, Sanction® is a costlier program than other available programs for evidence presentation. If you are considering using Sanction®, you will want version 2.8 or 2.9. The versions that have been released since then require that transcripts be encoded with software used primarily by court reporters. Furthermore, the more current versions do not have the clip creator for creating smaller clips of longer video files.

These are just some examples of the many available programs for media editing and presentation. Given the benefits of effective use of presentation software, the minimal expense, if any, is far outweighed by the productivity of the software used for courtroom technology purposes. It makes sound fiscal sense to invest in these programs.

IV. “But I Don’t Really Know How to Use PowerPoint”

Think back, if you will, to your very first trial. Maybe it was a serious case. Maybe it was a traffic ticket. For most of you, it was likely a nerve-racking experience. Despite all the education and training, and the years of preparing for that moment, it was never as “real” as that moment you actually started. This is not a new phenomenon. We all had to learn to ride a bike, to spell, to swim, to drive a car, to skate, or to do many other things at some point in our lives. Using computers and presentation software is no different. You just have to tell yourself you are going to do it, and then, follow through with it!

PowerPoint® is a highly user-intuitive program. If you are accustomed to using computers, then you probably are familiar with Windows-based programs. If so, chances are you can figure out the basics of PowerPoint® on your own. All you need to do is open it up

¹¹ For more information on this program, go to www.sanction.com

and start trying different things. Trial-and-error is a fairly good instructor. There are, however, many advanced features that may require additional instruction, but a lot of this information, for PowerPoint® and other presentation programs, is widely available on the Internet. Tutorials can be found on the Microsoft website, on YouTube, and other places.

Another good resource for attorneys is a publication entitled *Litigation Technology: Becoming a High-Tech Trial Lawyer*¹², authored by the late Mike Rogers, a former prosecutor. This book has some very helpful tips on the use of courtroom presentations in all aspects of the trial. It also has detailed instructions on using both PowerPoint® and Sanction.®. It is a bit obsolete because it uses older versions of evidence presentation software but it is still the most practical book out there on the subject.

V. “OK. I Have My Software and My Presentations. Now What?”

Obviously, you would not ask the jury to watch your presentation on your laptop. Unless your courtroom is already wired for technology presentations, you will also need hardware so that all the parties can see your presentations. In other words, you will need to connect your laptop to some other equipment for the display or publication of visual and audio evidence. For visual evidence, this might be as simple as a VGA cable going from your laptop to a simple high-definition television monitor. Another option would be the use of a digital projector displaying the images on a movie screen, or even on a wall in the courtroom if necessary. In either of these scenarios, you will also need to determine how to present audio evidence, if any. Audio can be routed directly to the television monitor. Self-powered external computer speakers are relatively inexpensive and also quite effective.

The most complex presentation systems come with a large screen with built-in projector, external monitors for the judge, witness and defense counsel, built-in document camera, VCR/DVD player, a sound system, and wireless controllers. One such system is the Nomad Presentation System by Nomad Technologies. However, these systems are quite expensive and do not fit everyone’s budget.

With a little research and an understanding of the equipment needed to bring your visuals into the courtroom, any Office can obtain the functional equivalent of the Nomad System at 1/10th the price. Such a system should include, at a minimum, a laptop computer, a large screen LCD/LED television monitor for the jury to view, a cart on which to mount the large screen LCD/LED and in which to store the other components, at least three 15” monitors for the Judge, witness, and defense counsel, a DVD player, and either an amplified speaker system or an audio connection from your laptop to the large screen television.¹³

¹² Published by Aspen Publishers in 2006

¹³ Of course all of these components need to be connected to each other. The laptop needs to be connected to a “splitter” which will then send the laptop picture to the large screen television and each of the small monitors. The type of “splitter” will depend on what output connection is used from the laptop. A VGA connection is becoming less and less common. This is the same type of connection that is used to connect a desktop computer to a monitor. If a VGA connection is used, you will need a VGA splitter with one input and at least three outputs. However, a VGA cable only transmits video signals. It does not transmit any audio. You would

VI. Courtroom Technology – What You Need to Know

Frankly, there are several factors to consider as you are putting together your courtroom presentations. For example, you may forego the use of technology completely except for your closing argument. You may use technology to present your evidence but not use it in closing argument. Whatever you decide, you should try and be consistent so as not to cause confusion among the jurors. In other words, you would not choose to publish scene photographs with your evidence technician on a big screen but then show actual autopsy photographs directly to the medical examiner. Choose one way or the other for that trial and stick with it.

A. Essential Rules of Using Courtroom Technology

1. The Tail Should Not Wag the Dog

You should never rely on the use of courtroom technology to do the work for you. When used PROPERLY, courtroom technology should be supplementing what you say, not the other way around. It is not a crutch to be used for a weak argument. The presentation should always back up what the attorney is saying because it is the attorney doing the work.

2. Keep Color Choices Simple

PowerPoint comes with a lot of interesting background and theme choices. Virtually all of them are not suitable for court. Keep your slide background choices limited to black (for photographs or digital images) or a darker blue (for text). The background of the slide should never be the focal point of your presentation and these two background colors are not distracting to the jurors. A white background is too bright for a courtroom presentation. Do NOT use dark text on a white background.

3. Keep Text Easy to Read

Just like any word processing program, PowerPoint has hundreds of fonts and unlimited font colors available for your text. Again, the focus should be substance over style. Limit your font choices to either Times New Roman (newspaper type) or Arial (the font used in this outline) to make the text easy to read. Similarly, use a light colored text (preferably white) with a shadow on the text on the dark slide to enhance readability.

In some cases you may want to highlight a word or a phrase in a block of text. In those instances, you can copy your entire slide by using the Copy/Paste feature. Click on your slide in the left region of the PowerPoint window, click Copy and then click Paste. An exact copy of your slide will appear right after the original. Then re-format the important

need a separate connection if you wish to play any media with audio. Newer laptops and televisions can be connected using a single HDMI cable. This connection transmits high definition video and audio in a single cable. If you use the HDMI connection, then you would need an HDMI splitter instead of a VGA splitter to send the video and audio signal to the large screen and the video to each of the smaller monitors.

text in the copy to another light color like yellow. When you go from the original slide to the copy, only the text color of the important word or phrase will change.

4. Avoid Using the Bells and Whistles

PowerPoint contains a lot of neat features which can make your presentation look quite spectacular, if that were your goal; in court it is not! There are dozens of animation effects, numerous sound effects, etc. PowerPoint has all of these features to make the dry, academic or business setting presentation more exciting. They are designed to capture and hopefully keep the audience's attention. Leave the use of those features to academic settings and for your personal presentations. Most of these do not belong in a trial presentation. It is your job, as the attorney, to capture and keep the jury's attention and back up your words with the visual presentation. Again, the focus should be on substance over style. The point you are trying to make should never get lost in the cool features PowerPoint has to offer.

5. Avoid Lengthy Blocks of Text

If you are going to put text on a slide, do not use long blocks of text. If you have a lot of text, break the passage up into several slides with key points on each slide. Smaller passages will be much easier for the jury to digest. Of course, jury instructions, in many jurisdictions when first introduced to the jury, must be verbatim and presented in full. But then they can be broken down into smaller parts during your argument.

6. Empty Spaces Enhance Visibility

Do not have your text or images (unless they are full slide images) all the way on the edge of your slide. When displayed, they will appear to be pushing against the edge of the TV monitor or movie screen. Leaving space or borders around your text boxes or digital images makes them easier for the jury to see when they are being displayed.

Similarly, if you must use a lot of text, or a running list of bullet points, or multiple paragraphs, use an extra space between them to make each one easier to see when the others are added to the slide.

7. Limit Your Slide to a Single Thought or Concept

Do not put too much information on a single slide. Keep your slides limited to a single thought or concept to make it easier for the jury to understand. There is no penalty for using extra slides in a courtroom presentation. Each point you want to make can be on a separate slide.

8. Avoid the Use of Abbreviations

Let's face it; an abbreviation of a word (e.g. P.O., Corp., Def.) is nothing more than a shortcut. When used in a presentation, a jury may perceive your use of shortcuts as a sign of laziness. This can have an affect on how your presentation is perceived by the jury. There is

usually no reason why you cannot type in the whole word. Unless the abbreviation is part of your evidence (e.g. scientific testimony about H₂O), do not use abbreviations in your presentation.

9. *DON'T SHOUT*

Other than perhaps in slide Titles, do NOT use all capital letters on your slide. When used in today's form of digital communicating (e.g., texting, chatting, and instant messaging) it is considered a form of shouting. Not only does the younger generation consider it a form of shouting, it is also distracting and harder to read than text that is not in all capital letters.

10. *Know Your Presentation Thoroughly*

You must know your presentation backwards and forwards. You should always know and be comfortable with what will happen when you either click the mouse, or enter a slide number. The last thing you want, or need, during a trial, is a slide in your presentation showing up for the whole jury to see when the jury was not supposed to see that slide at that point, or at all, during the trial.

11. *Know How to Set up the Equipment or Have Help*

A courtroom presentation requires the use of multiple pieces of equipment. At a minimum, there is a laptop computer and a television monitor that must be connected to each other. Other systems can be a little more elaborate with additional monitors for the judge and opposing counsel, amplified speaker systems, and/or digital projectors. Either make sure you know how to hook up all of the components, or have someone available to help you. Performing a set-up and a trial run should always be done before the jury comes into the room. This must be done in advance to 1) make sure all of the equipment works; and 2) to make sure your presentation is properly working.

12. *Avoid the Use of Long Video/Audio Clips During Argument*

During your argument, limit your use of video/audio clips to short and succinct points. The jury does not want to watch you hit play and sit there for minutes while they watch or listen to evidence that they have already seen or heard during the trial. They will get an opportunity to watch or hear the entire video/audio when they are deliberating. Rather than playing an entire audio or video for the jury during your argument, make and use short clips and incorporate them into appropriate places in your argument to support the point you are trying to make.

13. *Talk to the Jury – Not to the Screen*

Have a monitor within your view so that you can always see what the jury sees on the big screen behind you. There is never a reason for an attorney during a closing argument to talk to the large screen. As the advocate, you should always be talking to the jury with text

and images appearing on the screen behind you to back up and support what you are saying. Once you start talking to, or pointing to the screen, you are now backing up the presentation instead of the other way around. If something needs to be highlighted, there are ways of doing that in PowerPoint without having to look back at the screen. Ideally, your laptop or monitor should be in front of you, perhaps on a chair or short stand right in front of the jury box. This way, you can talk to the jury and always see what they see on the large screen without ever having to look back. The display on your laptop or monitor will also serve as your visual reminder of your argument.

Also, if you are using a wireless presenter to run your presentation, do not point it to advance your slides. Newer presenters utilize RF technology and do not require “line of sight” that the older IR presenters required. RF presenters will work around corners, behind closed doors, from your pocket and even through walls. Instead of pointing your wireless presenter at the laptop every time you need to advance your slide, just keep your hands where you would normally have them during your argument and casually advance your slides.¹⁴

14. Turn off Power Savers and Screen Savers

Many people like to set the power savers on their laptops which essentially makes the laptop go to sleep after a period of non-use. Unfortunately, like people, laptops do not always wake up very well. The last thing you want is for your laptop to be temperamental when you wake it up to present evidence.

Also, screen savers kick in after a period of non-use. You do not need the jury to see a slide show of your last vacation, or a scrolling marquee about your favorite hobby, or the familiar 3D pipes, because your laptop has gone unused for 5 minutes.

At the same time, always run your laptop from an AC outlet. Do not rely on your laptop battery to keep your laptop going. Laptop batteries are notorious for not holding a charge for very long. Once your battery goes dead, you are done. Plug it in!

15. Test your presentation in the courtroom on the courtroom system

Once you have created that perfect presentation, complete with edited video and audio, hyperlinks, and all sorts of other cool stuff, make sure you get to your courtroom early (preferably when the defense is nowhere to be found) and run through every single slide. Make sure everything looks and sounds the way you designed it to look and sound. Make sure all off your audio and video works. Make sure all of your hyperlinks work. Make sure the screen resolution is the same. What looked like a circle on your office computer might just look like an oval in the courtroom because the courtroom has a wide screen display and your presentation was not created that way.

¹⁴ In fact, I have seen many people “point” the wireless presenter at the screen or LCD monitor, thinking they must do that to advance their slides. However, there is NOTHING on the screen or the LCD monitor for the wireless presenter to communicate with. The wireless receiver is always connected to the laptop, not the screen. The fact that it still works this way only proves the point that you do not have to point the transmitter/presenter to make it work.

16. *Be Prepared for the Possibility of Equipment Failure*

Finally, despite all your hard work and preparation, it is always possible that something may go wrong with the presentation. A bulb in the projector can burn out; the laptop could freeze up, etc. Have all of your evidence and instructions ready on your table in case you have to go back to a non-technical presentation.

B. Linear vs. Non-linear Presentations – What’s the Difference?

A linear presentation is one that starts on slide 1 and advances sequentially slide by slide – slide 2, slide 3, slide 4 and so on - until the presentation is finished. The speaker need only use the “Next” function to advance to the next slide. Most lectures and seminars are presented in this fashion. They can be presented in this fashion because the speaker knows exactly what he or she will say from the start to the finish and need only follow the line of thought to get to the end.

Linear presentations are great for an opening closing argument. As a prosecutor, you should know, well before you get up to address the jury, your entire argument from beginning to end. The structure of this argument lends itself very well to a linear presentation. Photographs, jury instructions, diagrams, key words, etc can all be worked into the presentation in a pre-determined order. As long as you use the presentation to assist you, not do your argument for you, the combination of the visual with the spoken argument can only serve to enhance your argument.

A non-linear presentation, on the other hand, is one that does not have a pre-defined order. The Sanction program mentioned above allows the user to present in a non-linear fashion by using keyboard commands to call up images in any order. By simply typing the name of the image you want to display, which can be as simple as a single letter, and hitting enter, you can call up that image.

While many persons are trained in the use of PowerPoint, most are trained to use it in a linear fashion. However, PowerPoint can also be used in a non-linear fashion. For example, if you know that the picture you want to show is on slide 15, you can use the laptop keyboard to type in the slide number and then hit “Enter”. This will call up that particular slide. Using this feature, just like in Sanction, your slides can then be called up in any order you desire.

Another way to use PowerPoint in a non-linear fashion is through the use of “hyperlinks.” While this may sound complicated, all a hyperlink does is tell PowerPoint, when you click on a certain item on a slide, instead of going to the “Next” slide, go to a different slide in the presentation, or to another presentation and open it, or to a computer file (document, audio, video, program) and open it.

Instead of thinking of a courtroom presentation as being linear, having a start and an end, it is helpful to think of the start as being the center, or hub, of a wheel. From this centralized location, you can then follow spokes (via hyperlinks) out to any other point on the

outside of the wheel, and then return to the hub. By thinking in this fashion, you begin to see PowerPoint in a non-linear fashion and the virtual limitless use of evidence presentation software during your trials.

C. “Ok. I Think I Can Use It. But Where Do I Start?”

The use of courtroom technology will require some advance time and work. While it may take a little additional preparation time, the more you use it, the less time it will take you to prepare. Regardless of the extra time required, the payoff is well worth the added effort. Here are some things to keep in mind:

1. Digitizing Your Media

Needless to say, you will not be able to use presentation software if your media is not in digital format. Thus, unless you receive your photographs in digital form, you will need to have them scanned. Any documents you may use as evidence should be scanned as well. If you have analog video or audio (e.g. VHS tape or audiocassette), you will need to have that converted to digital format as well.¹⁵

Not only should your evidence be in digital format, your jury instructions should be in digital format as well. Using jury instructions in evidence presentation software is a smooth and efficient way to address the law in your closing argument. It not only frees up your hands while you are speaking to the jury, it allows the jury to read along with you so they know exactly what the instructions will look like when they get them in the jury room. Presumably, your instructions were prepared in one of two ways: 1) typed in a word processing program; or 2) copied and modified from the disc that accompanies the pattern jury instruction books. In either case, they are already in digital format and will be ready to be inserted into your presentation by simply using the “Copy” and “Paste” feature.

2. Organizing Your Digital Media

Once you have all of your media in digital format, you should organize to make it easier to locate when putting together your presentations. The best way to do this is to first create a Folder somewhere on your computer¹⁶ and give it a name, such as the last name of your defendant(s). Open this Folder and then create new Folders inside of this one. Each new Folder should have a name for a certain type of evidence. For example, you can have Folders named Photos, Video, Documents, Audio, etc. If you have a lot of digital media, you may even want to create subfolders. For example, inside your Photos folder, you may want to

¹⁵ The conversion of analog video/audio is beyond the scope of this presentation. But some general principles are appropriate here. For video, it will require the use of additional video playback equipment connected to your computer. For audio, it may be as simple as connecting a tape player's headphone jack to your computer's microphone jack and using a program like Windows Movie Maker to create the digital audio file.

¹⁶ Where you create this Folder is completely up to you. Some people like to create it directly on the desktop to make it easy to find. This is done simply by right-clicking on your desktop, go down to “New” and select “Folder”. Give the new Folder a name and you are done. Others may create in under the “My Files” directory. It does not matter where you create the Folder as long as you know where it is.

create additional Folders that are called Scene Photos, Autopsy Photos, Witness Photos, etc. Inside your Videos Folder you may want additional Folders for Original Videos and Edited Videos, or Surveillance Videos and Defendant's Confession. How you organize your digital media is up to you but good organization will make the process much easier in the long-run.

In Fig. 1 below, within the Folder for defendant Rubin Brandon, there are Folders for Photos, Video, and Sentencing. The Sentencing Folder contains its own set of subfolders for the digital media to be used at the sentencing hearing. You can also see 12 separate PowerPoint presentations that were used, most of which were linked to one another for evidence presentation and arguments.

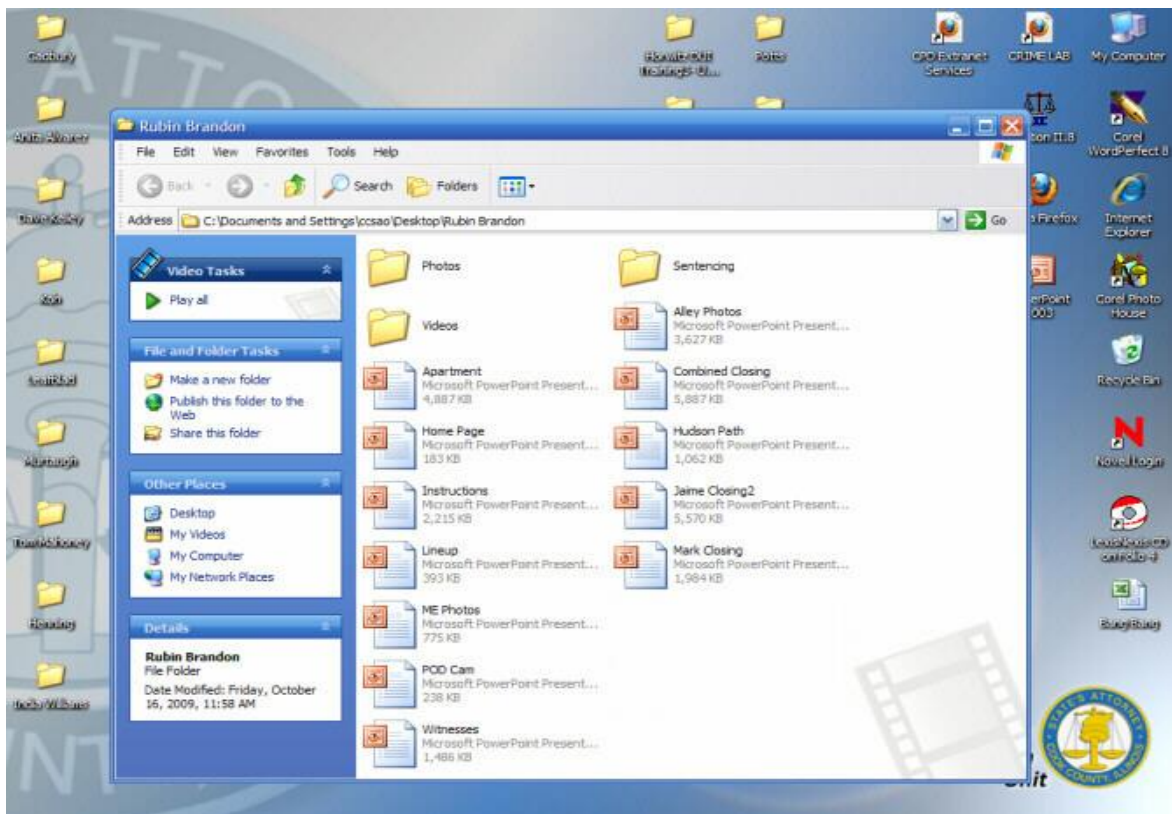


Fig. 1

3. Start Building Your Presentations

Once you have all of your digital media organized, you are ready to start putting your presentations together. You may want to start simple and just put them all in one presentation. You may want to create separate presentations for each type of media – i.e. scene photos, autopsy photos, etc, and then use hyperlinks to tie them all together. The more you use the presentation software, the more creative you will become. The most important thing to remember is that it should be put together in a manner that is easy for you to use.

Keep color choices in mind as you choose backgrounds and other effects in PowerPoint. You want the slides to be easy to see and understand by the jury. Generally,

black and blue are good background colors. The standard black background looks as if nothing is on the screen except the digital media you put on the slide. The black background is good for photographs and video. A standard blue background is a familiar color to jurors in that it looks like a TV screen when a DVD player is turned on but no disc is playing yet. The other benefit to a blue background is that you can add a black shadow to text to make it stand out against the background.

Keep in mind, if you use hyperlinks in PowerPoint to move from one place to another, always be sure to create another link to get back to where you started. Hyperlinks will not serve you well unless they are “two-way” streets.

VII. Courtroom Technology? Not In My Jurisdiction!

As stated earlier, some of the fear about using courtroom technology rests in the fact that it is a relatively new concept. Because of that, judges who are not familiar with the use of evidence presentation software may be initially reluctant to let you use it. Just like any new or novel process, the more we use it, the more the judges will realize that there is nothing improper about it and the more accepted it will be as a means of presenting evidence and making arguments. Here are some cases from the jurisdictions in which reviewing courts have addressed the issue of evidence presentation software.

Arizona

State v. Sucharew, 205 Ariz. 16 (1st Div. 2003)

PowerPoint presentation was essentially a slide show of photographic exhibits admitted at trial and thus there was no abuse of discretion by permitting the State to use it in its opening statement, even though there were descriptive words and labels superimposed on the images.

California

People v. Katzenberger, 178 Cal. App. 4th 1260 (3rd Dist. 2009)

The use of a PowerPoint display showing a puzzle of the Statue of Liberty to describe the reasonable doubt standard was a misrepresentation of the reasonable doubt standard and was improper, but did not rise to the level of reversible error given the overwhelming nature of the evidence.

People v. Otero, 210 Cal. App. 4th 865 (4th Dist. 2012)

The use of a PowerPoint display in closing argument which contained the outline of the State of California and some otherwise inaccurate information to explain reasonable doubt was improper, but the error was harmless because the judge ordered the jury to disregard it and also the judge properly instructed the jury on reasonable doubt.

Connecticut

State v. Francione, 136 Conn. App. 302 (2012)

The prosecutor's use element charts and a summary of evidence in a PowerPoint presentation in closing argument was proper because all of the information on the slides was supported by evidence introduced at the trial, and the presentation was not used solely to appeal to the passions of the jury, to express the personal opinion of the prosecutor or to confuse the jury or prejudice the defendant.

Delaware

State v. Spence, 2014 Del. Super. LEXIS 242 (2014)

The use of a photograph of a murder victim in a PowerPoint closing, with the caption "Christopher Spence's actions led to..." "terror, fear, and the ultimate crime...MURDER," where the word MURDER was in red lettering, was linked to the evidence presented at trial and consistent with the testimony, even though the court commented that the slide was "admittedly strongly worded."

Moreover, captions regarding the law of self-defense must be considered in light of the actual argument made by the prosecutor to determine if the captions misstated the law.

Florida

Brown v. State, 18 So. 3d 1149, 2009 Fla. App. LEXIS 14083 (4th Dist. 2009)

PowerPoint used in rebuttal argument was improper for two reasons: 1) it contained an image that was never introduced at trial and the name of a witness who never testified at trial; and 2) it went extensively beyond what would constitute proper rebuttal of the defense closing.

Kansas

State v. Adams, 280 Kan. 494, 24 P.3d 19 (2005), *overruled on other grounds*, *State v. Warrior*, 294 Kan. 484 (2012)

It was proper for the prosecutor to use a PowerPoint as a demonstrative exhibit to illustrate the mechanics of shaken baby syndrome, even though the PowerPoint varied in some respects from the facts of the case because the PowerPoint fairly and accurately represented shaken baby syndrome and assisted in explaining the medical testimony.

State v. Kemble, 291 Kan. 109 (2010)

The prosecutor's use of a PowerPoint slide in closing argument that stated "He never said I was too drunk to remember until today" to discredit the defendant's trial testimony was an improper *Doyle* violation (see *Doyle v. Ohio*, 426 U.S. 610 (1976)) which was magnified by the fact that it was contained in a previously prepared PowerPoint presentation rather than made as a "spur-of-the-moment comment delivered extemporaneously under the stress of countering a defense argument."

Louisiana

State v. Gillespie, 934 So. 2d 707 (1st Cir. 2005)

Defense request to supplement the appellate record with a PowerPoint presentation used by the prosecutor during *voir dire* to explain the differences between direct evidence and circumstantial evidence was denied because the presentation was not introduced as evidence and was not objected to.

Missouri

State v. Wheeler, 219 S.W.3d 811 (S. Dist. 2007)

As part of a claim that the prosecutor improperly made reference to the defendant's failure to testify, the defendant failed to properly preserve a record of the PowerPoint presentation used by the prosecutor in closing argument.

Nevada

Watters v. State, 313 P.3d 243, 2013 Nev. LEXIS 105 (2013)

PowerPoint slide used in opening statement that contained a photograph of the defendant and ended with the word "GUILTY" superimposed over the photograph was the impermissible use of argument and expression of personal opinion, despite the fact that it was displayed while the prosecutor was telling the jury that she would be asking them to find the defendant guilty.

"...PowerPoint, as an advocate's tool, is not inherently good or bad. Its propriety depends on content and application. A prosecutor may use PowerPoint slides to support his or her opening statement so long as the slides content is consistent with the scope and purpose of opening statements and does not put inadmissible evidence or improper argument before the jury. [Citation] But a PowerPoint may not be used to make an argument visually that would be improper if made orally."

New Mexico

State v. Vance, 145 N.M. 706 (2008)

There nothing improper about allowing a prosecution expert to use a PowerPoint presentation to describe the manufacture of methamphetamine because the demonstrative evidence was used as context for the expert's later testimony about actual drug and drug-related items found in the defendant's residence.

New York

People v. Mora, 868 N.Y.2d 722, 57 A.D.3d 571 (2d Dept 2008)

The trial court properly allowed the prosecutor to use a PowerPoint to illustrate the injuries and mechanics associated with shaken baby syndrome.

People v. Sulayao, 871 N.Y.2d 727, 58 A.D.3d 769 (2d Dept 2009)

The trial court properly allowed the prosecutor to use a PowerPoint to illustrate the injuries and mechanics associated with shaken baby syndrome.

People v. Santiago, 22 N.Y.3d 740, 9 N.E.3d 870 (2015)

In a murder prosecution where it was alleged that the defendant suffocated a 21 month old baby, and there was medical evidence establishing that it would have taken up four to six minutes for the child to suffocate, the prosecution's use of a PowerPoint in closing argument that had a postmortem photograph of the victim, with various captions at 30 second intervals about the medical testimony, was relevant to the issue of intent to kill. However, having the postmortem photograph slowly fade to white at 30 second intervals over that six minute period would not have aided the jury in its fact-finding function.

North Carolina

State v. Hallman, 2010 N.C. App. LEXIS 2366 (2010)

Defendant failed to preserve a record of the prosecution's PowerPoint presentation used in closing argument and the record revealed that the trial judge sustained several of the defendant's objections during the closing argument.

Ohio

State v. Hilton, 2088 Ohio 3010 (8th App. Dist. 2008)

The use of a PowerPoint presentation in closing argument with the scales of justice improperly suggest that the defendant has a burden of proof and improperly equates quantity of evidence with quality of evidence.

Oklahoma

Browning v. State, 2006 OK CR 8 (2006)

There was nothing improper about the prosecutor using a PowerPoint presentation in closing argument which depicted properly admitted photographs.

Bell v. State, 2007 OK CR 43 (2007)

It was improper for the prosecutor to mark exhibits displayed in a PowerPoint presentation with his own comments about the case, thought that error alone was not sufficient to warrant relief.

Oregon

State v. Reineke, 266 Ore. App. 299, 337 P.3d 941 (2014)

Prosecutor's PowerPoint in closing argument that indicated that the defendant's invocation of his right to remain silent was evidence of the defendant's guilt was improper and was not justified by the limited right the prosecutor had to explain why the police did not record their conversations with the defendant.

Tennessee

State v. Jackson, 2012 Tenn. Crim. App. LEXIS 1003 (2012), *rev'd on other grounds*, *State v. Jackson*, 444 S.W.3d 554 (2014)

There was nothing improper about the State using a PowerPoint presentation in its closing argument which contained photographs of several witness as they appeared at trial since the State was allowed to remind jurors of the various witnesses as the State recounted their testimony.

Texas

Henricks v. State, 293 S.W.3d 267 (11th Dist. 2009)

There was nothing improper about allowing a blood spatter expert to use a PowerPoint presentation during her testimony since it contained photographs properly admitted at trial, was used as a demonstrative to explain her testimony, and was not available to the jury during deliberations.

Washington

In re: Glasmann, 175 Wn.2d 696 (2012)

The prosecutor's use of a PowerPoint presentation which contained a booking photograph of the defendant and captions like "DO YOU BELIEVE HIM?", and "WHY SHOULD YOU BELIEVE ANYTHING HE SAYS ABOUT THE ASSAULT?", and also which contained the word "GUILTY" superimposed three times in red letters over the booking photograph, was the inappropriate use of evidence not admitted at trial and also was an improper expression of the prosecutor's personal opinion of guilt.

This court went on to state: "We hold that the prosecutor's misconduct, which permeated the state's closing argument, was flagrant and ill intentioned." Explicitly recognizing the power of visual media, the court further stated: "Moreover, the misconduct here was so pervasive that it could not have been cured by an instruction."

State v. Fedoruk, 339 P.3d 233, 2014 Wash. App LEXIS 2848 (2014)

The prosecutor's use on closing argument of a PowerPoint that contained a photograph of a murder victim's body with the caption "Murder 2" in large red letters above the photograph constituted the use of altered images not admitted during the trial.

VIII. Conclusion

Technology in the courtroom is not the wave of the future – it is the wave of now. Studies and experience have shown that the use of evidence presentation software greatly enhances the jury's ability to understand and remember evidence. Today's jurors expect to receive their information in a technological way. By creating a visually enhanced presentation, you are meeting their expectations. The use of evidence presentation software to bring your evidence to the jury will result in a more effective, compelling, and professional presentation. If we as prosecutors want to continue being as professional and

convincing as we can be, it is time that all prosecutors' offices move into the technology age and use some form of evidence presentation equipment in their courtrooms.