

IT'S SHOWTIME!
**Using Technology to Add Organization and
Pizzaz To Trial Presentations**

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Experts say we remember only 20 percent of what we hear. That number jumps to over 50 percent for that which we both see and hear. As lawyers whose job is to convey information and persuade thought, the benefits of using graphics and visual aids is compelling. For decades, lawyers have relied on flip charts, foam-board blowups, and demonstrative models in making our case to the jury. Today, modern computer technology provides yet another option for the legal practitioner. Using graphics software digital projectors to assist in computerized trial presentation, mediation, arbitration, or settlement conferences can be a powerful, streamlined, and effective tool. Surprisingly, computerized trial presentation can also be considerably less expensive, and much more flexible, than some alternatives previously relied upon.

Computers have been commonplace in the law office for the past two decades, used first primarily as wordprocessors and for some timekeeping and accounting functions, and more recently also serving as schedulers, document managers, and litigation support. It has only been in the latter half of the 1990's that computers began being used to assist lawyers with presentation of their case at trial. Today, as a result of ever faster processing speeds, decreasing cost, and increasing jury sophistication, computers assisted trial presentations

have now come of age.

This paper will discuss a full range of methods for effectively using computers to organize and assist the lawyer at trial or other persuasive presentations, including a brief survey many of the primary computer programs available to the legal professional for this function, will survey computer hardware requirements, and will conclude with suggestions and considerations in presentation techniques.

Uses for Computer Presentation at Trial

Computers can play a tremendous role in assisting a lawyer in conveying his case to a judge or jury. The computer can be used as an electronic “chalk board” or “flip chart” in opening statement and closing arguments. Likewise, through use of digital photography or scanning and some very basic editing tools, the computer can be used to focus a jury’s attention to certain portions of evidence. Computers can be used to replay videotape footage, such as videotaped deposition’s, or footage of a location at issue. When stored in a MPEG-1 format, 2 hours of audio and video testimony can be stored on a single CD. Similarly, the computer can be used to project demonstrative evidence to the jury, and assist in the examination or explanation of a witness or expert. The computer provides a natural and very effective means of organizing the case file, witness by witness, or topic by topic. Finally, the PC is a very efficient and effective method of publishing images of photographs or documents to the jury during witness examination.

Digital presentation has many advantages over previously relied upon alternatives, giving the lawyer more control over what the jury sees, when they see it, and how they look at it. While examining a witness concerning a document, for example, the examiner can publish of the document to the jury by projecting the document on a screen at precisely the time he desires the jury to focus on the document. The jury can then see for itself the precise document, and precise language, addressed in the questions and answers. Likewise, through use of digital “highlighters” and text magnification, the interrogator can focus both the witnesses’ and the jury’s attention to specific text contained in the document.

Essential Tools

In order to fully utilize all aspects of courtroom presentation, the lawyer should have available the following tools: A laptop or notebook PC with sufficient speed and memory to operate today’s presentation software; a scanner; a digital camera; some form of presentation software; and a projector. Unless the lawyer desires or anticipates the need to capture images at trial, it is unnecessary to bring a scanner to court. Likewise, unless the lawyer desires to focus the jury’s attention to a specific part of physical evidence not previously available to counsel, a digital camera at counsel table is not necessary. However access to these tools at some point during trial preparation is essential in order to get documents into the computer in a format that can be projected at trial.

The Laptop Computer

Of the above-mentioned equipment, the laptop computer and the projector are the most expensive. Laptop computers, like their desktop counterparts, have dropped significantly in price over the past year. While all the software identified in this paper will operate on a machine as slow as a PIII 500 MHz with 128 MB of RAM, with the possible exception of playback of some video footage, the wise lawyer will purchase a machine with a minimum processor speed of 2.0 Ghz, and at least 512 of RAM. While slower legacy machines can be purchased for as little as \$500 on the refurbished market, the demands of full motion video, coupled with the heavy reliance trial counsel must necessarily place on the reliability of his computer, and the devastating effect that a technical error can play on counsel's credibility and ability to present his case, a more modern and robust machine in the \$1,500 to \$2,000 price range is the more prudent choice, and will provide adequate speed and performance for the next several years. However, having such a legacy machine available as a backup is a sensible approach to safeguard against an equipment failure crisis. Similarly, such a legacy machine may be useful as a second, non-presentation machine for use at counsel table, for such things as a document database or witness outlines.

Some consideration should go into the user's brand choice. While desktop computers are, by and large, commodities, with one labeled machine being as reliable and fast as a similarly equipped box bearing no brand, laptops are different. Due to the inherently small nature of laptop and notebook computers, each these devices contains many proprietary designs, and

proprietary components. As such, it is this author's recommendation that the end user limit his choice of laptop computers to well known brands, such as Dell, IBM, Gateway, or Toshiba. Access to quality, 24-hour, technical support is vital, especially given the inherent "mobile" nature of these machines. It is not uncommon to experience a glitch the night prior to a presentation, and access to technical support from one's hotel room at 1:00 a.m. can be a life saver. In this author's experience, machines from lesser-known vendors simply do not provided a suitable level of reliable and available support. Likewise, it is inevitable that some parts of a laptop computer will be to be replaced over the machine's lifetime – most notably batteries– and purchasing a laptop from a recognized brand will assure you of readily available replacement parts.

Trial Runs

Laptops have smaller power supplies than desktop machines, and therefore can create some problems with distributing video, audio, and mouse signals over long distances. Likewise, often the video processors of laptops are lack sufficient memory or processing power to project an image to both the local machine and the projector simultaneously. Although the laptops will appear to be working fine, the distribution of the signals will not always work. Therefore, any attorney relying on trial presentation software should test his system thoroughly with the actual wires and cables intended to be used at trial, before using it live in the courtroom.

Projectors

The type of projector to use in court is a critical question. Single biggest consideration in choosing a projector to use in the courtroom is lighting. Projector brightness is measured by lumens. The greater the lumen designation, the brighter the projector. Projectors with lumens of 1000 or less can be purchased for as little as \$999, however, these machines will not produce a large display capable of being read across a large room in under bright lights. A lawyer seeking to use a dim projector in the courtroom may find himself frequently seeking permission to turn on and off the overhead lights. This can, at the very least, be annoying to jurors, and may simply just be prohibited by the presiding judge. Likewise, dim lighting causes problems for the court reporter, the judge's clerk, and opposing counsel not being able to see his notes, not to mention the jurors' annoyance or temptation to sleep. The answer for courtroom presentations is a bright projector with very good resolution – at least 1800 lumens, with at least 1024x768 resolution. A projector with this brightness should be able to display an image on a 100" screen in bright ambient light. If a screen as large as 150" is necessary, the lawyer should consider a projector in the 2300 to 2700 lumen range. An additional consideration must be noise. Projectors noisier than 45 decibels may be too noisy for a courtroom, especially a small one, and thus should be reconsidered. Prices of projectors continue to fall, and as of the time of this writing, 1800 to 2000 lumen projectors can be purchased for as little as \$2,000. Brands are not that important a consideration in choosing a projector, and prices for comparably equipped projectors are usually

competitively priced. Look for rebates when considering a purchase, as many projector manufacturers offer a free bulb or cash rebate periodically. Consultants at www.projectorpeople.com or www.projectorsforsale.com are very helpful in selecting the right projector, and will make recommendations based upon your specific needs.

Projectors can be leased on an as needed, daily basis, as well. There are several vendors in Mississippi who lease projectors on a daily or weekly basis, however rental of these projectors tends to be very expensive. One final note – always carry an extra bulb. Projector bulbs are very specialized, (and expensive) and cannot merely be picked up at the nearest Office Depot. If you are relying on displayed images and your projector bulb goes out, you are in trouble. Bulbs generally costs \$200 - \$400 each, and last between 2,000 – 4,000 hours.

Presentation Software

Specialized trial presentation software is not mandatory to effectively utilize computers in courtroom presentation. A lawyer with a simple text editor which comes standard with Microsoft operating systems, a Web browser, and a knowledge of HTML programming language, can create effective trial presentation displays for use in court. However, a much simpler approach, with far greater effect and broader capabilities, is use of a presentation software, such as Corel's Presentations, or the near ubiquitous Microsoft PowerPoint, found in the Microsoft Office Suite. These robust software programs are user-friendly, and capable of handling all but the most complex of trial presentations, including

image blowups and moving video. PowerPoint is best suited for scripted presentations, such as opening or closing arguments, and is far less effective in the often unpredictable and extemporaneous examination of witnesses at trial. In the heat of battle, software with faster recall and “fly-by-the-seat-of-your-pants” features should be considered. Options for such software include Summation, the CaseMap suite of software, Trial Director, and Sanction II. Text Map and Summation both contain database capabilities for quickly locating documents, and both provide some very limited presentation options. For maximum trial impact and flexibility, however, Trial Director and Sanction II represent the current state of the art in trial presentation. These two latter products are far more complicated than merely using PowerPoint, and have a significant learning curve, but they provide a lawyer with the ability to replay video depositions with a synchronized text using word search capabilities, the ability to find key testimony segments and save for later recall, the ability to immediately recall any document by bar-code scan or typed exhibit number, and the ability to annotate and enhance any document on the fly, for maximum jury focus and impact.

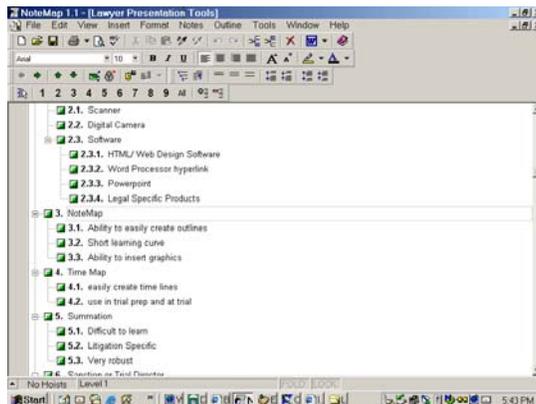
The cost of these software programs varies dramatically. Notemap sells for approximately \$150, while CaseMap, a more robust database program, sells for approximately \$500. Summation ranges from \$1,000 to \$2,500, depending on the feature set desired, although it is primarily a litigation support software designed to maximize trial preparation efficiency, and only secondarily focuses on trial presentation tools. Sanction II and Trial Director each sell for \$600, and

offer nearly identical features.

NoteMap

NoteMap is a great little product contained in a suite of products distributed by CaseSoft. NoteMap is essentially an outlining tool, giving the user the ability to quickly create outlines, and quickly expand or contract the resulting subparts for focused review. They call this feature “hoisting.” The product sells for approximately \$150, and is a great outlining tool, with a very intuitive interface. While not truly designed as a presentation tool, NoteMap can be used as such because of its capability to embed graphics into each outline item. This function gives the litigator the ability to organize graphics in an outline of witness questions, where they will be available for recall at the proper moment during examination.

All that is required to associate an OLE object with a line of outline text is to highlight the line of text associated with the desired image, move the mouse into the right margin of that line, and then right click. A menu will appear, from which the user will select



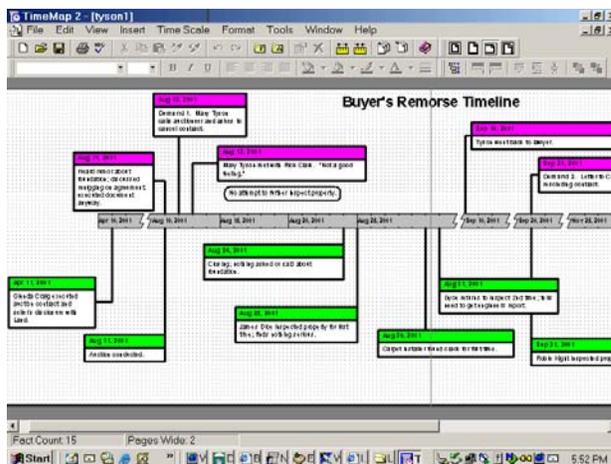
“insert link to file”, after which the user will select the file to which you wish to associate to that line in your outline. Thereafter, whenever the user wishes to

recall and display an image, he simply double-clicks on the paperclip icon next to the line. The image will then be brought up in its default viewing application assigned to that image type, such as Adobe Acrobat Reader for .PDF images, or Internet Explorer for .TIF images, for example. This solution is a very simple method of attaching images to concepts within a presentation in an organized fashion. It provides the lawyer with a simple method of organizing images with topics, storing them in an organized manner, and the ability to project the images at the proper time in an examination or presentation without fumbling for photographs, documents, or blowups.

Timelines

TimeMap

Another product sold by CaseSoft is TimeMap. This program is designed



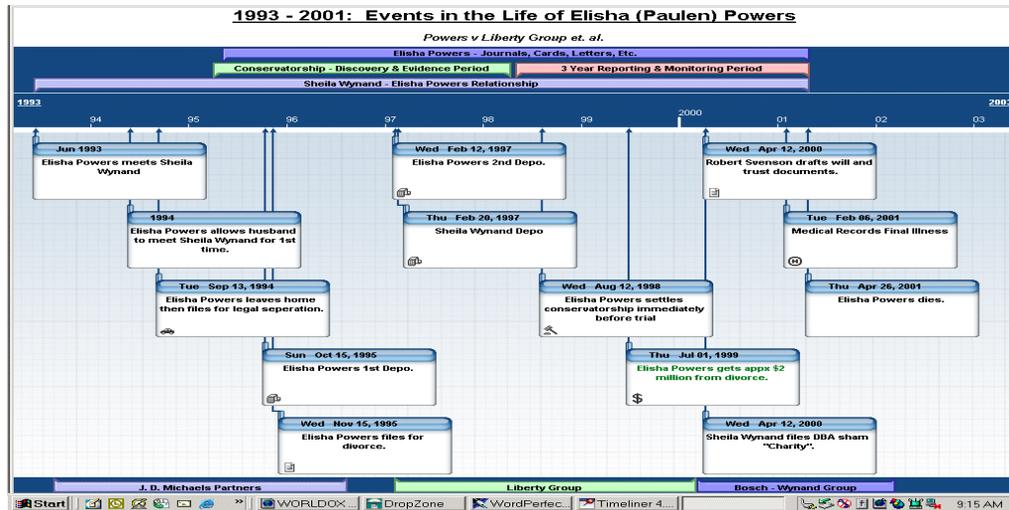
specifically to create timelines.

That is all that it does. In a very straightforward, easy to operate format, this is software will enable a lawyer to quickly create timelines, and change them as needed, even as the case

develops at trial. The end product is a high quality, multicolored graphic, rivaling those created by trial graphic professionals, at a fraction of the cost.

Timeliner

A new product that also provides the ability to create high quality timelines is Timeliner by inData. This product likewise is used to produce high quality timelines. The graphics in Timeliner are more sophisticated, and the program has more presentation options, with the ability to call each fact up one at the



time. It will also seamlessly link with the next version of

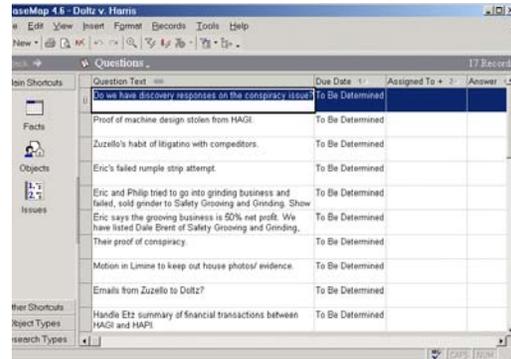
TrialDirector.

The use of timelines is not limited exclusively trial presentation. Frequently, this author utilizes timelines in early client meetings, to ensure that he fully understands the chain of events as described by the client, as well as to refresh clients' recollection of the order of events and other pertinent facts. This exercise often results in memories being jogged, and additional information coming to the attention of the lawyer which may otherwise have remained forgotten. While the same exercise can be done with a magic marker and a whiteboard, the use of software for this function communicates to your clients a level of professionalism and command over technology that magic marker

scribbles cannot.

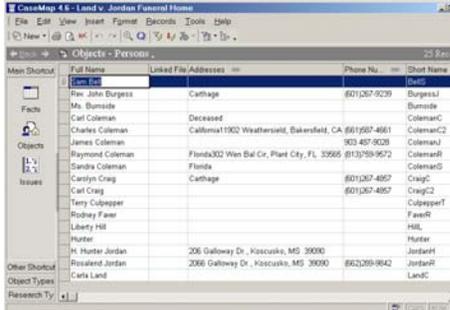
CaseMap

The third, and flagship, product in the CaseSoft suite of products is CaseMap. This program is a highly complex relational database designed to capture all relevant information in a case, including parties, facts, and documents.



As in NoteMap and TimeMap, scanned images of documents contained as a database entry in CaseMap can be linked to that database entry for quick retrieval. CaseMap has different database tables for entry of facts, events,

cases, documents, people, and legal issues, all of which can be cross referenced in the relational database, and linked to multiple external files for later retrieval. CaseMap sells for around \$500 per seat. The entire CaseMap suite costs approximately \$850.



Summation

Another law specific product which can be used to assist in courtroom presentation is Summation. While not designed as a courtroom presentation

software, Summation does have built-in some limited presentation capabilities. Summation is primarily a litigation support software designed to aid the lawyer in getting a handle on, and filtering through, all of the documents and testimony generated during pretrial discovery, and in preparation for summary judgment, motion practice, and ultimately for use at trial. Its primary purpose has always been to assist the lawyer in determining “what” to use at trial, not to create a mechanism for “how” to present it. However, the product does contain a “slideshow” function which enables the litigator to designate certain images, documents, or transcript testimony, for easy access to use at trial. Summation is a very complex program, and a difficult to learn. However, it is arguably the best and most comprehensive litigation support software on the market today, giving the litigator the ability to summarize and digest depositions in an orderly and efficient manner, as well as provide access to multiple databases of documents, pleadings, and images. It is also quite expensive, ranging from \$1,000 to \$2,500 per user, and requires an annual support agreement at a cost of approximately \$500 (which I recommend because the program is so difficult to use).

www.summation.com

Sanction II and Trial Director

Both Sanction II, produced by VerdictSystems, www.verdictsystems.com and Trial Director by inData Corp., www.trialdirector.com are designed specifically for courtroom presentations. Both possess the ability to synchronized deposition testimony with digitally captured images of the testimony, for video

deposition play back. Both likewise possess the ability to highlight text on images, and create blowups of that highlighted text for emphasis, in a very impressive format which rivals that typically seen on network television news broadcasts. The programs are relatively easy to use, although do require some practice. Additionally, both programs integrate well with Summation, and can export slides to PowerPoint. In essence, these programs are like PowerPoint on steroids. Both are similarly priced at around \$600. A third entry in this field is Visionary. It too has the capability to perform on-the-fly markups of exhibits and exhibit calls, similar to Trial Director and Sanction II, and it also has the additional edge on price – its free. A module for deposition and text synchronization is sold separately, as is technical support. Visionary can be downloaded at www.visionarylegaltechnologies.com or www.freevisionary.com.

PowerPoint

By far, the most widely available, and most economical, trial presentation software products are Microsoft's PowerPoint or Corel's Presentations. Both of these products come bundled in their respective manufacturers' office suites, and tutorial CDs and literature are readily available for each. Due to its dominance in the corporate world, Microsoft PowerPoint has considerably more references available for it, as well as experienced users. Both programs have the ability to produce colored, high quality, "talking points" or text outlines, import, annotate, and enhance graphic images, including .tif images, bitmaps, and .jpg, as well as the ability to produce low-tech (and low-cost) custom animations.

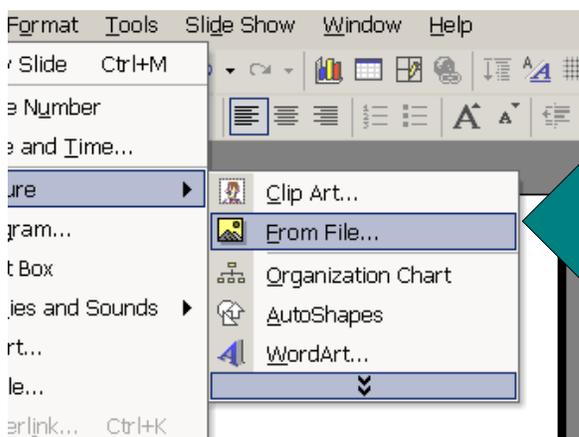
Text outlines

Building text outlines is a simple process in PowerPoint, as this is the primary function for which this software was designed. However, in the Trial context, there are several do's and don'ts that the legal practitioner should keep in mind when preparing such outlines. A PowerPoint slide should be used to outline the main points of a presentation, not simply repeat verbatim the verbal text being presented. Slides which are two full of words, and repeat almost exactly what to the present or is saying, take away from the verbal presentation and are not as effective in assisting the litigator in communicating to his audience. Similarly, the orator should be careful not to clutter a slide with too much text. Too many talking points on a single slide can be overwhelming to the audience, or at a minimum, difficult to read. Equally important is the text background. PowerPoint comes with numerous "templates" which create elaborate backgrounds designed to impress the corporate audiences which are most frequently the recipients of PowerPoint presentations, and who are tired of seeing the same form of presentation over and over. Many of these templates may be distracting when used in the context of jury presentations. The presenter should carefully review the slides from the vantage point of the jury before determining background color, texture if any, and text color. Most trial consultants advise that simple, solid colored backgrounds are more effective in the jury presentations than these predefined templates. In short, when creating slides for jury presentation, "keep it simple." Do not get too fancy with text slides

or text animation. Words flying across the screen over and over during a presentation can be, at best, distracting. Animations, when properly used, can be very effective, and are quite simple to achieve in PowerPoint.

To add animation to text, follow these steps: click on the pulldown menu slideshow, then custom animation. This will bring up a box that allows you add some animation graphics to everything from text to graphics to objects. The different effects can be found by clicking the down a row by the entry animation and sound on. This will give you a list of the built-in animation effects that can be done on a block of text. Some of the text animation techniques can be too fancy and inappropriate for courtroom. I frequently used the “Disappear” effect for text. Unless there is a specific compelling reason to use sound, don’t. Play with the other animated text features and you may find them to be very useful and illustrative. The main use of animation on text is to allow the audience to focus on one point at a time on the screen.

Inserting graphics



One of the most common uses of PowerPoint in litigation is the presentation of documents or photographed images. The simplicity of this technique makes its application a common one, and it can be very effective.

Using images already scanned onto your

computer, follow the following steps to

insert graphics into a PowerPoint

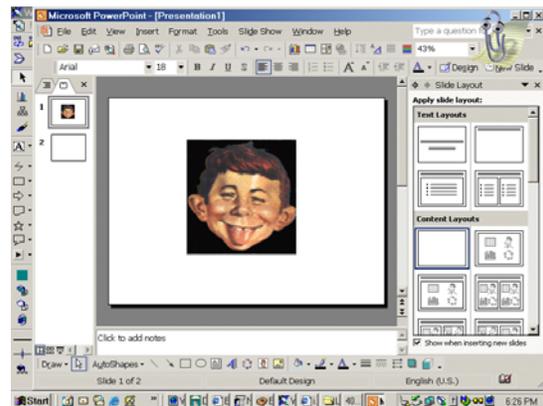
presentation: From the “insert” menu on the

toolbar, select “picture.” Use the browse

box to find the location of the desired

document page or photographed image

file. Once you select OK, the picture will



automatically be inserted into your slide. You can now resize the image of a

selecting the one of the small white boxes surrounding the imported image. This

allows you to insert text above or below. Now you can add text by using the

simple technique discussed above. Start typing the desired text and you can

now create a graphic or slot within imported

image in it. Once admitted into evidence, a

PowerPoint slide with surrounding text can make

a very effective illustrative point.

Similarly, blowups or enhancements of

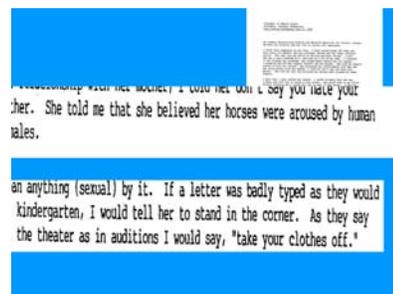
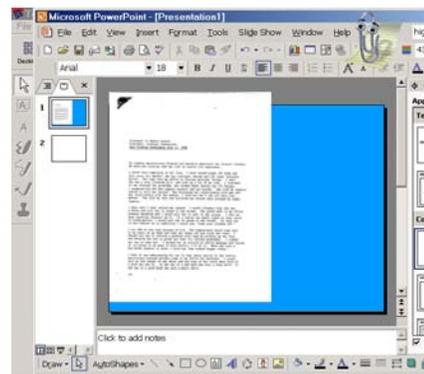
existing portions of the image can be easily

created in PowerPoint. Simply follow the steps

outlined above to get the image onto the

PowerPoint slide. Next highlight the image and

simultaneously press the “Ctl” and “C” keys on



your keyboard. Next move the cursor to a blank poor place almost slot and simultaneously press the “Ctl” and V” keys on your keyboard. This will create a duplicate of the image. From there, this duplicate image can be enlarged, using the graphic editing functions built into PowerPoint, in order to create blowups or outtakes of the image, thereby drawing the jury’s attention to the precise place on the document at issue relevant to your point.

Specific Applications for Powerpoint

The following is a far from exhaustive list of suggested uses for PowerPoint slides:

- Exhibits
- Video deposition testimony
- Document blowups
- Document markups
- Opening Statement Outline
- Closing Argument Outline
- Demonstrative Animation
- Assist with expert testimony to “teach” the jury
- Arial photo - survey overlay
- Timelines
- Picture collage of tort victim used at closing.

Tickle Me Elmo

The Elmo provides an easier, less technology intensive method of

presenting documents to a jury. An Elmo is, in essence, a digital camera mounted on a stand with lighted base which can be projected on a screen via a digital projector. The camera can be manually focused on whatever document or object is on the base. While not as splashy as the call up of scanned images with animated blowups, the Elmo requires little training to operate.

Some projectors now come complete with an accompanying Elmo type camera attached, such as the Toshiba TLP-T61MU, giving the lawyer the option to present both digitally or through live image. While these camera/projector combinations are nice, some consideration should be given to the practicality of placing images at the camera location. In other words, the location of the projector in order to project the image may not be all that convenient to access during trial. For that reason, a dedicated Elmo may be preferred.

Screens

While some courtrooms are equipped with pull-down screens, the lawyer seeking to use these presentation tools should plan on bringing their own. While the old tri-pod style screens from school days of old are still available and functional, newer screen technologies are now available which are better suited for use in the courtroom due to their lighter weight and ease of movement. Tripod screens are heavy, bulky to carry, and are less than simple to put up and down. More often than not, something in the leg apparatus of these screens sticks when folding the screen. In a courtroom setting, it may be necessary for the lawyer to remove his presentation equipment at the conclusion of each

witness so as not to interfere with his opponent's use of the room. The older, more clunky screens make this setup and pull down less than elegant. Newer screen technologies, such as Da-lite's Insta-Theater, allow for rapid breakdown and movement of the screen as needed in the courtroom. These screens come sized 60" to 100" diagonally, and range from \$400 to \$700.

Final Thoughts

Presentation software such as PowerPoint, TrialDirector, and the other products discussed above, can greatly enhance a lawyer's presentation to jury, and assist him in conveying his message. New advanced hardware and software tools are being developed at a rapid pace which could also be put to use in the courtroom. These innovative developments can enhance the lawyers efforts in the area of computerized trial presentation and courtroom technology. However, a courtroom may not be the optimal place for all of these high-tech tools. The lawyer must always be careful not to overuse technology, or even to use technology at all when the case does not call for it. Going overboard with too much technology can actually backfire on a lawyer, especially one not comfortable or well versed with the hardware or software. Some thought should be given to bringing along an assistant or technology consultant to operate this equipment, especially where the lawyers are uncomfortable with the technology. If a third party is used to operate the equipment, he or she should have practiced with the attorney prior to trial, and should have a good sense of timing. This will make for a much cleaner presentation, and will ensure that the lawyer knows the

limits of what the software can do and will not ask for the impossible while standing before the jury. Some thought should be given to the absence of the operator during the opposing attorney's time before the jury. This may eliminate the opposing counsel asking for a certain exhibit to be called up for the jury, or otherwise benefitting from your technology investment.

In many cases, the use of technology may simply be overkill. Keeping it simple can save the lawyer a lot of embarrassment. Every case is different, and must be examined for its unique qualities, and evaluated for possible appropriate uses for technology as an enhancing presentation tool. Remember, what makes for a slick demonstration may not appeal to or be appropriate for a jury or judge in a courtroom. Just because you can do something does not always mean you should.

Not all judges are as receptive to the use of technology in their courtrooms. Unless a local practice has already been established, before assuming that such technology will be permitted, the lawyer should obtain the judge's permission to use the desired technology in his courtroom, as well as any limits he or she places on its use. One judge of which this author is aware will allow video playback of deposition testimony, but will not allow closed captioning text to accompany the playback. Another would only allow impeachment of a witness through the publication of the deposition page, not the actual playback of the video segment of the deposition.

In preparing for a trial in which technology will be relied upon, one must

also prepare for disaster. Always have a backup plan ready in the event the technology fails (and it will). This author always prints copies of exhibits anticipated for use at trial in the event of a computer or projector failure. These exhibits will already be in the computer in digital format, and printing copies takes little effort. Paper and toner are cheap. As mentioned earlier, a backup computer is also a prudent safeguard. Additionally, any presentation material should be backed up prior to trial so that the information can be reloaded on a different computer if necessary during trial.

Technology in the courtrooms is here to stay, and will only continue to improve in capability and ease of use. Attorneys as a group are slow to innovate, and many will continue to use foam boards and easels for the foreseeable future because that is how they have always done it. Those lawyers who are willing to adopt the use to this technology have an opportunity to gain a competitive edge until the bar at large adopts such techniques.

Ronald Morton is a lawyer who utilizes all of the above trial technology in his practice. He is a Certified TrialDirector Trainer and provides training and consulting services for lawyers throughout Mississippi.