The Top 5 Trial-Presentation Software Challenges— And How to Overcome Them

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As a litigator, you know the importance of an effective trial presentation. Many of you have embraced software to communicate better with judges and juries. But as trial-presentation technology moves from novelty to expectation, it's important to understand where the greatest challenges lie to ensure success in the courtroom or other setting.

This article has the answers thanks to a December 2013 nationwide survey of law firm partners, associates, litigation support professionals and librarians. Conducted by LexisNexis, the survey sought to better understand their experiences with presenting evidence at trial in general and with trial-presentation software in particular. The results coalesced into the five challenges and solutions discussed below.

1. Keeping Evidence Organized

Keeping evidence organized earned the dubious distinction of being the top trial-presentation challenge by survey respondents (45%). Modern litigation software excels at keeping evidence in order, but many litigation teams lack experience using the organizational features of the software.

Litigators who started their career using binders of paper exhibits and ELMO document projectors find the move to litigation software daunting. However, trial-presentation software enables you and your team to find and present evidence much more quickly and efficiently than the traditional paper-based method.

In my practice, I organize evidence by using a case-management database such as LexisNexis® CaseMap® to track evidence from the inception of a case through discovery and trial, and trial-presentation software such as LexisNexis® Sanction® to show the evidence at trial.

Throughout the case, my case-management database enables me to keep my evidence in order and to link it to issues, chronologies, witnesses, to-do items and more. At trial, my laptop has a copy of the database with copies of every trial exhibit, enabling me to search and retrieve documents by witness, exhibit number, issue in the case and/or text in the document.

For example, suppose Trial Exhibit 42 is a letter from Bob Smith to Simone Chang dated December 9, 2006, that you want to use as evidence of fraud. You want to question Bob Smith about the letter at trial. You can find this exhibit by searching by date or for "Smith" or "Chang." As Mr. Smith is questioned about the letter at trial, the trial-presentation software instantly displays Exhibit 42 on screens for the witness, judge and jury.

2. Keeping the Jury and Judge Engaged

"Keeping the jury and judge engaged during trial presentations" was the second most prevalent concern in the survey (43%). Jurors and judges can be a tough audience to engage for several reasons, including:

- Television, movies and the Internet deliver high-quality and fast-moving information tailored to their individual interests. (Researchers at Ball State University's Center for Media Design reported in 2009 that adults in the U.S. are exposed to media screens of one kind or another on average about 8.5 hours per day.)

- Courtroom audiences will likely exhibit a mix of learning styles, with up to 65 percent being visual learners.

- Evidentiary and procedural rules and objections from opposing counsel may restrict how attorneys present their case.

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To overcome the engagement problems inherent in courtroom presentations, litigators can learn much from studying others who perform.

For example, consider Jon Stewart of *The Daily Show* on Comedy Central. Each evening, Stewart and his team present a tightly scripted and fast-moving presentation linked to images and video clips that support and illustrate their

points. As another example, watch the evening news. Today's anchors communicate with a steady stream of supporting images in the background.

Distilling these lessons from mainstream media, litigators should focus on telling fast-moving, coherent and interesting stories supported by helpful visual content. Trial-presentation software makes this possible.

3. Lack of Time and/or Resources to Implement Correctly

"I would have written a shorter letter, but I did not have the time."

—Blaise Pascal
The Provincial Letters
Letter XVI

As Pascal's statement illustrates, time and resource constraints limit all human endeavors. Not surprisingly, more than 29 percent of survey respondents cited the lack of time or resources to properly implement a trial-presentation software solution. To overcome these constraints, we must make good decisions in light of our goals, and prioritize.

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Time Constraints

Trial-presentation software can significantly improve your trial presentations, and is cost-effective because it reduces the need for manual time-intensive, paper-based alternatives. Like anything worth doing, you need to make time for trial-presentation planning. Thus, start thinking about trial presentation earlier and prioritizing it higher.

Resource Constraints

Time constraints are inversely proportional to resources. If you have the resources to hire expert trial presentation help, you can prepare to present at trial much faster. Hiring experienced professionals is a great help if you can afford it, but if not, your trial team should know how to operate trial-presentation software.

The resources that will give you the biggest "bang for the buck" are (1) people who can advise you on trial technology and the presentation of good visuals that will aid your case, and (2) high-performance trial-presentation software that can show your case.

4. Issues With the Software Working Correctly

Twenty percent of survey respondents expressed concern about issues with their presentation software working correctly during trials.

Litigation teams with this concern should retain an experienced trial-presentation consultant and/or spend time working with and learning the capabilities and reliability of trial-presentation software. They will find that trial-presentation software works well in trained hands.

Software can crash, and the computers upon which software runs can fail. However, prepared and skilled software operators can calmly and quickly restart the software or switch to a backup computer.

5. Connecting to Presentation Devices

Twenty percent of survey respondents cited the challenge of connecting to electronic devices during presentations. To address this concern, litigation teams must be prepared and have alternatives ready. In particular:

- Scout the courtroom in advance to find out if you will need to bring your own display equipment (e.g., projector, screens and/or monitors) or if a pre-installed system exists

- Determine if the court requires a court order allowing technology equipment in the courtroom (e.g., many federal courts in California require such an order)

- Set up the presentation system and test it before each day of trial begins

- Have backup components should one fail. Our trial technicians typically bring two laptops loaded with the software and all exhibits, two projectors and many types of cables for all types of connections

Conclusion

Trying a case before a judge or jury and presenting your evidence effectively will always be full of its challenges, but leveraging the power of trial-presentation technology will help you present with confidence.

Using reliable litigation-presentation software such as LexisNexis Sanction is one of the best ways to prepare for and present an effective trial presentation. When placed in the hands of an experienced member of your team or a trial consultant, it provides litigators with an effective way to organize, manage and present evidence throughout the life of a case.

About the Author

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