Trial technology: Is TrialDirector™ right for you?

When you're trying to impeach a witness, it's no time to be fumbling to find a key photograph or important paragraph.

BY TED BROOKS

If you've been in trial within the past 10 years or so, you've likely seen technology used to present documents, demonstrative slides, photos, animations, videos and even videotaped depositions. You may have noticed the efficiency in getting evidence in front of the jury, and the effectiveness of getting everyone literally on the same page, and even the same paragraph with the key text highlighted. If you've been involved in a trial in which one side used technology while the other didn't, you may have noticed the stark contrast in presentation methods, and the overwhelming volume of evidence introduced via technology. In fact, it has been suggested that as much as three to four times more evidence can be displayed during trial, and that trial time may be shortened by as much as 30 to 50 percent.

Regardless of your experience with trial presentation technology, it is now possible for you to represent your clients using state-of-the-art software such as TrialDirector. In this article, we will cover some of the basics, in order that you might incorporate this "high-tech wizardry" into your trial practice.

If you've witnessed a techno-disaster in court, this may have influenced you to avoid becoming the next victim. On the other hand, if you've seen it flow so smoothly that it appears anyone can do it; you've likely witnessed someone who really knew what they were doing. Al-

though computer and program crashes are far less common these days than even only a few years ago, it can still happen. When this happens, it is the operator that can save the day or allow the ship to sink – experience is key.

This is not about PowerPoint™. Although PowerPoint™ is often used in trial, it is usually best reserved for use in opening statements and closing arguments – places in which the story is well-scripted and prepared, and where last-minute changes are unlikely. The strength of PowerPoint™ is also its weakness, however. A PowerPoint™ presentation is prepared, rehearsed and presented exactly as planned and designed, in a predetermined order, running from start to finish, with everything properly ordered in between.

Unfortunately, trial proceedings don't always (if ever) go according to plans. Fortunately, TrialDirector takes that into consideration, allowing for quick and random access of your entire evidence collection – including documents, photos, demonstratives, videotaped depositions and animations.

Best-case scenario

Technology can be used for nearly any case, and at any stage. Settlement conferences, hearings, mediations, arbitrations and trials of all types can benefit greatly. Showing up at a mediation with a full-blown trial presentation can certainly have an impact on the proceedings.

One type of trial is not necessarily better-suited for technology than another. While a case with numerous photographs and/or other visual evidence might seem like an obvious choice for using technology (and it is), the other extreme would be a document-intensive case, in which there is seemingly nothing "sexy" to look at – just a bunch of boring documents. On the contrary, this type of case may benefit even more, given the quick and effective manner in which evidence is displayed, offering jurors a way of engaging with the evidence. This is simply not possible when using a stack of hard-copy exhibits. Deposition video excerpts with closed-caption text may be used for impeachment purposes or absentee witnesses, and a document as viewed by the deponent can be displayed simultaneously. It would be hard to find a more powerful method of damaging the credibility of a witness than having them watch themselves on the big screen along with the jury as they are impeached via video testimony. *(See Image 1 – on Next Page.)*

Getting started

Even when budget is a significant factor, there are still ways to bring in the weapons of war. Although you may not be able to afford the luxury of having someone handle all of the trial presentation duties for you, you can handle the basics yourself, which is still far more efficient than frantically rifling through exhibits in search of that missing exhibit during the
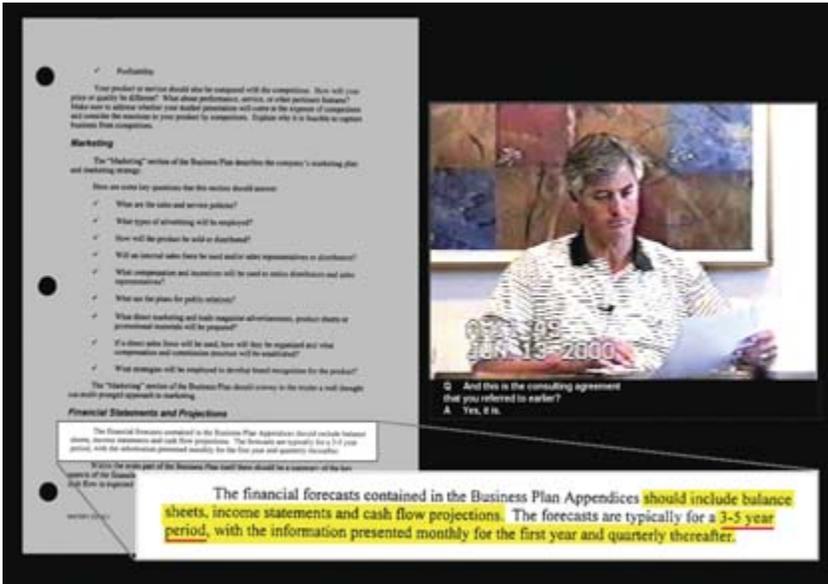
Image 1: Mark key paragraphs in a long document

Three of the most important things to master are quickly locating and presenting an exhibit (database structure is critical), zooming in on a portion of the document, such as a paragraph or sentence (by simply drawing a box around the desired selection), and highlighting the key text in your selection (also done by drawing a box around the selection, with highlighter tool active). While TrialDirector is capable of much more, these three simple steps are a few of the primary features used in trial.

The next step

If you have in-house paralegal support, you may be able to handle the trial presentation duties in-house, retaining a trial consultant for the database development, trial equipment rental and setup. This can greatly reduce the risk of errors and other issues which might spell disaster during the trial. Trial is not the best place for experiments, and your clients won't be too happy if their technology investment proves to be of little or no value.

In a mid-sized firm, it may be feasible to hire someone with trial technology experience. While many paralegals and IT staffers can do a good job with trial presentation, an attorney, paralegal or other staff member should realize that trial presentation is also a full-time job – especially during the trial itself. Larger firms may have enough trial support work to justify hiring one or more full-time in-house trial technicians. They would typically be part of the Litigation Support or IT department.

All the "bells and whistles"

When needed, a professional trial consultant can minimize the risk of problems which can and will arise during trial (it's not "if," but "when"). While many attorneys don't actually go to trial more than once a year or so, professional trial consultants typically spend more time in court each year than not. This unique position helps them keep up to date with all

trial, as judge and jurors become impatient. It goes without saying that it is not a good thing when the desired exhibit is not located and counsel is forced to move on. Not to mention, even though you may wish the jury were intently focused and following along as they examine a hard copy document, passing it from one juror to the next, chances are they are neither following you nor looking at the portion of the document you had referred to. In fact, they may be looking at something you'd rather they not see. An exhibit handled in this manner can become a distraction rather than an effective display of the evidence.

So, how can you quickly get up to speed with the least expense and time investment? You may want to contact a local trial consultant and ask him or her to show you some options. There is generally no charge for an initial consultation, which can be helpful in making a better-informed decision on how to proceed.

The next step would be to get the same tools the pros use. There are a few options available (with similar features), but for purposes of this article we will cover TrialDirector, by inData. It may   be purchased directly from inData

(http://www.indatacorp.com), or through a certified inData TrialDirector Trainer (often at a discount when purchased along with training or trial support services). List price is currently $595 for two installations (on two different computers), plus $119 for an annual maintenance plan (includes support and program updates).

If you're able to get to Phoenix, inData offers an excellent free training course that will introduce you to the program and the company. If not, you can install the software and begin learning it on your own if you're so inclined, or you may prefer to get a bit of training to jumpstart the process. One advantage of training in your own office prior to trial is that you can have your consultant install and configure the program on your computer and set up your actual case for you, using that as your training data. This can help maximize your investment of time and money and make the training much more interesting.

In a matter of a few hours, you can easily cover the basics required to handle your own trial presentation. You may need some assistance with the setup of the database, but you should be able to take it to court and present the evidence.

of the software and advanced techniques. They can often let you know about a certain courtroom or judge and can assist in communicating with court personnel whom they may have worked with in the past. Another added value is their list of resources for anything trial-related. Having a one-stop "go-to" during trial can be priceless. A good trial presentation consultant should be able to handle nearly any technology-related issue that may arise, be it in court or the war room.

They will normally supply the trial support computers, so you will not necessarily need to purchase trial-specific software and equipment.

Data structure

Regardless the value of your case or number of exhibits, technology can and should be utilized. A database with hundreds of thousands of exhibit pages operates just like one with only a few hundred. The key is having everything organized prior to database development. Without going too techie here, it is vital to implement and adhere to an exhibit numbering (e.g., Bates) system, as well as a logical file and folder structure. It is best to set this up early in the process, as opposed to dealing with different and duplicative numbering shortly before trial. Simply put, every exhibit and every page must have a unique ID.

Which exhibits in the database?

It is common practice to review and select the key exhibits for use in trial. While this may be helpful for your own organizational purposes, it is not the best route for your trial database. Rather than delaying development of the database, it is easier, more efficient and cost-effective to simply include everything you have in the exhibit collection. Another box (or several) added to the database won't do much damage to the budget, but it can certainly hurt you during trial if you have chosen to limit your exhibit database and find that you need an exhibit which is in
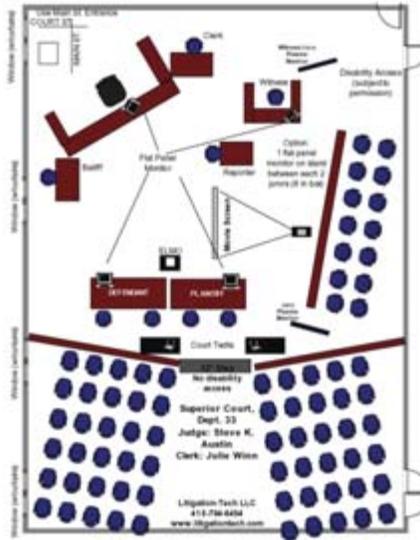

Image 2: A technology plan for the courtroom

a binder back in the office. One simple rule to follow: If you would bring it with you in hard copy to an out-of-town trial (which generally means bringing *everything*); include it in your trial database.

Setting up the courtroom equipment

If all parties agree to share the trial presentation equipment, rental costs and setup fees are also shared. This is something to consider when deciding whether to rent or purchase equipment, as is the fact that along with equipment comes setup, maintenance, and replacement as necessary. Many firms have needlessly purchased inferior trial presentation equipment which is not suitable for courtroom use. Unless you're feeling generous and wish to supply opposing counsel with all the technology, you may want to avoid that hurdle. The court will generally allow only one setup in the courtroom – not one per party. Fortunately, many courts are purchasing and installing equipment. Unfortunately, some of that fits the "not suitable for courtroom use" category.

A typical courtroom setup will include a high-powered projector (3000 lumens or greater, not DLP), screen, flat-panel exhibit preview monitors for counsel, judge and witness, a document camera (ELMO), a sound system and a complex wiring and switching system to control it all. *(See Image 2).*

Call to action

If you are ready to look into technology for an upcoming matter, most trial consultants will be happy to give you an initial no-cost consultation, or their version of the "dog and pony show." You can learn a lot and get a better idea as to how you might put it all together. I have yet to work with an attorney who has gone back to the "old school" method of trial presentation once they've given this a try. I have seen many (the majority) cases won by attorneys using technology for their first time. The methods of trying the case have not changed – only the manner in which the evidence is published to the jury.

The 21st century is already 10 percent behind us, and there are no good reasons to avoid trial presentation technology. You don't have to do it yourself, but you can if you want to. There is a way to make it work for everyone, and there is plenty of help available. Trial technology is here to stay, and now is the time to bring it into your practice. Jurors expect it, Courts encourage it, and your clients deserve nothing less.

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