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## Technology In Court: A Brief Guide For Trial Attorneys

Jeffrey Allen

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Modern technology has assumed a role of significant importance in our personal and professional lives. It has changed how we eat, how we dress, how we relax, what we carry when we leave the house or office, and the way we practice law.

### Multi-Media

Modern technology has brought us the multi-media presentation (combinations of audio and visual components often including text, still pictures, video, animations and other forms of graphics). Born as a product of the entertainment industry, multi-media presentations have found their way into corporate boardrooms, becoming a standard tool in business presentations. Educators use multi-media presentations as a teaching tool. Inevitably, the multi-media presentation also found its way into the courtroom, as trial attorneys, striving for the winning edge, discovered its potential as a trial presentation device.

### Affordable Technology

Initially, the cost and the difficulty of coordinating and using multi-media presentations in connection with a trial, limited the availability of such technology to trials involving significant amounts of money and usually larger, better financed, law firms. However, technological evolution over a relatively short time has made it possible and economically feasible for smaller, less well-financed, law firms to use multi-media presentations in trials in smaller cases.

To create and make a presentation, you will need a portable computer, a projector and a screen (or a hookup to television monitors). The required equipment has become smaller, lighter, more powerful and less expensive in the last few

1. What is the name of the SEC database that contains forms filed by public companies?

- a) EDGAR
- b) EDWARD
- c) EDCORP

» ANSWER IS...

From CEB's *Drafting Business Contracts: Principles, Techniques and Forms*.

2. What is a binder or a cover note in an insurance document?

- a) a plastic binder that holds all the insurance documents
- b) a paper amendment to the main policy
- c) a separate document from the final policy that provides a temporary contract of insurance

» ANSWER IS...

From CEB's *California Liability Insurance Practice: Claims and Litigation*.

3. A covenant not to compete after employee termination is unenforceable under California Law. Is this statement:

- a) true
- b) false

» ANSWER IS...

From CEB's *Trade Secret's Practice in California*.

years. Software has also improved, becoming more powerful, easier to use and less expensive. A \$3,500 budget can get you everything you need to create and use basic multi-media presentations.

The computerization of large and complex cases still necessitates significant work and the technicality of that type of presentation, using all but the simplest forms of multi-media support, requires greater expertise than most lawyers possess. The volume of work associated with such a presentation makes it more practical to use an assistant in the trial. But, even in those cases, parts of the technology have become so simple that a trial attorney can control and use them without help. In smaller cases that cannot bear the cost of a trial presentation consultant or technology assistant, a trial attorney working alone can still make good use of multi-media presentations.

### Why You Should Do It

The increasing importance and use of technology in the practice of law has changed the nature of continuing legal education programs offered to attorneys. Legal technology programs have grown in size and increased in frequency of presentation. Established providers (such as CEB) have introduced programs on technology into their curricula. Such programs run the gamut of discussions of available technology, to implementation issues associated with technology, to substantive law and ethical considerations associated with the use of the technology.

*The use of available technology can simultaneously streamline the presentation of information at trial and make the presentation more effective and more easily understood by the judge and/or jury.*

Recognizing the importance and significance of technology to today's practice of law, new courtroom construction often includes pre-wiring for electronic presentations and computer equipment. Some jurisdictions have retrofit courtrooms to accommodate such technology. Some courts have actually acquired hardware for use during trials, further reducing the practitioner's cost of using such technology and encouraging attorneys to use it due to the convenience and time savings it affords the court.

### Effectively Using the Technology

The technology currently available to attorneys for preparation and presentation of cases at trial covers a range of tasks, including:

**1. Locating Documents.** You can scan documents into computers and use a computer database to file and recall them. Every document in a large document case can be scanned, filed and stored in the computer for easy and quick recall. The attorney or an assistant can locate documents through the use of keywords, a text string, identification numbers or even bar codes. (Compare that to fumbling

through a box or boxes of documents to find the needed document.)

**2. Using Documents.** All or a part of the document can be presented on screen for viewing by the judge, jury, witnesses and counsel. You can mark key portions of the document for use in opening statements, closing arguments, or witness examinations. A document can be tagged in connection with witnesses' testimony. (Compare that to, finding a copy of the needed document and passing it around for everyone to see or working through a collection of blow ups of partial text mounted on poster board, finding the right blow up and holding it up or mounting it on a stand in a position where the judge, jury, witnesses and counsel can see it.)

**3. Using Depositions.** Portions of a deposition testimony can be presented on screen in simple text format, in audio-visual format (if you have a video taped transcript), or as a combination of text synchronized with the audio and/or visual record (presentation of a video taped deposition as a synchronized presentation of picture and sound of the witness's testimony with the text shown as a subtitle). (Compare that to reading part of the transcript out loud.)

**4. Using Pictures.** Large-sized pictures can be displayed on screen concurrently to the judge, jury, witness and counsel. You can mark pictures before presentation to identify key portions. Marking can also occur during testimony to identify key points of interest. (Compare that to passing a photo around for everyone to see or having a larger sized blow up prepared that must be located and held up or placed on a chart rack or stand each time you want to refer to it.)

**5. Using Video.** Video clips can be easily shown using the same multi-media technology. (Compare this to setting up a projector to show a short video clip.)

**6. Using Other Graphics.** Charts, tables, time lines, diagrams and animations can be used in conjunction with witness testimony, opening statements and closing arguments. (Compare that to handing pictures around, showing a series of large blow-ups on poster board, showing a chart or diagram on poster board or a witness drawing, or writing on a whiteboard or chalkboard.)

**7. Using Text.** Time lines and textual information can be used in opening statements and/or closing arguments to help develop or to emphasize important points. (Compare that to: (a) using no visual aids; (b) using blow-ups on poster board; (c) passing things around or holding up items too small to be read by the judge or jury at that distance; or (d) writing on a whiteboard or chalkboard.)

### **Getting Started- Hardware**

**1. Laptop Computer.** Recent price reductions have made adequate laptop computers available in the \$1,000-\$2,500 range on Mac and Windows platforms. Generally, smaller and

lighter laptops cost more than larger and heavier versions. My favorites include Apple, Fujitsu and Winbook. Sony, Dell, Gateway and others also offer perfectly adequate laptops for multi-media presentations. Apple's PowerBooks and iBooks work very well. If you want to use the Windows platform, get at least a Pentium III processor or equivalent running at 600 Mhz or better. I am partial to Windows XP Professional and recommend it; Windows 2000 is also very reliable. Without regard to platform, the laptop should have a CD/DVD Rom drive, a reasonably sized hard disk (20+ Gigabytes), adequate RAM (512+ MB for Macs and for Windows XP; 256+ MB for Windows 2000), USB Ports (if possible, get USB 2.0) and the ability to connect to an external monitor. FireWire ports and a CD burner are first choice extras.

**2. Projector.** Very good projectors can be found in the \$1600-\$3,500 range. Projectors using DLP technology generally cost less, weigh less and have smaller footprints than equivalently powerful LCD projectors. Color purists may assert that LCD projectors deliver better color. Lower resolution (e.g. SVGA as opposed to XGA) projectors generally cost less than higher resolution projectors. Larger (12" x 15" x 4" or bigger compared to 10" x 10" x 2" or smaller) and heavier (5-12 pound compared to 3-4.5 pound) projectors generally cost less than smaller and lighter projectors. When choosing a projector, consider the display brightness (measured in lumens). A projector with 2000+ lumens should present well in most situations, including well-lighted courtrooms. Projectors with less than 1000 lumens work acceptably in darkened rooms. As one manufacturer's 2000 lumen unit may prove significantly brighter than another's, check out the image a projector displays in a brightly lighted room before you buy. Many companies offer reliable projectors; my favorites include, HP/Compaq, Toshiba, Epson, Sony, and InFocus.

**3. Document Camera.** You might also consider acquiring a document camera (projects documents, transparencies and three-dimensional objects onto the screen). Excellent document cameras can be found in the \$2,700 to \$3500 range. Samsung offers a very portable 12-pound document camera. It comes with a case and packs up to about 20" x 20" x 4". Toshiba offers another good choice for those who want to take a document camera with them most of the time: a combination projector/document camera. The combined units work well and cost less than a separate document camera and projector.

### **Getting Started- Software**

Software choices will depend on your chosen platform and on what you want to do with multi-media presentations.

**1. Windows, the High End:** If you choose to work on the Windows platform AND you choose or need to use multi-media in large quantity documents cases and/or you want to use video depositions, consider purchasing a trial packaging program, like Trial Director or Sanction II. Sanction II may be

easier for an attorney to use and control without an assistant; but, if you are involved in a complex matter with numerous documents and need to locate and display the documents quickly on screen, you will need help to ensure that the technological issues do not distract you from the substance of the case.

**2. The Mac OS:** We have not located any current versions of trial packaging programs for the Mac. Mac-using attorneys, however, are a hearty and creative lot. Many of them have found ways to use computers to control documents in cases through the use of database programs such as FileMaker (available for both Mac and Windows platforms) and have found ways to synch up video and text deposition transcripts using graphics tools such as QuickTime.

**3. Keeping It Simple:** PowerPoint may be the most frequently used software for multi-media presentations. You can learn PowerPoint very easily and quickly. With PowerPoint, you can create simple, but impressive, presentations. PowerPoint contains enough features that you can also use it to build sophisticated presentations, incorporating combinations of (a) text; (b) video; (c) still pictures; and (d) other forms of graphics including charts, graphs, timelines, tables and animations. PowerPoint works well on both the Mac OS and Windows platforms. You can acquire it separately, but will find it more cost-effective as part of the Microsoft Office suite. Corel's Presentation software (available only on Windows as part of the Corel Word Perfect Office Suite) offers similar functionality. You can acquire a less full-featured version of this genre of software as part of the Think Free Office suite available on Mac and Windows platforms.

### **In Summary**

Exposure to modern entertainment, advertising and business technology has familiarized many judges and jurors with multi-media presentations and their effectiveness. As such presentations become more and more common, familiarity will likely turn to expectation. Today, using it can put you ahead; tomorrow, failing to use it may leave you behind.

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