

High Tech Litigation



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High-Tech Litigation



Well-Mapped Strategies and Tactics Win the Day

The outstanding oral advocate has a powerful advantage in the courtroom. Technology brings a power of its own to court that levels the playing field. When you present your case, jurors instinctively form a mental picture utilizing the details you give them. Technology-empowered methods, such as digital evidence presentation, ensure that your listeners will envision the facts as you do. For a well-prepared lawyer, the advantage gained with the power of technology is almost always substantial, no matter what kind of case is being litigated. If your opponent uses technology effectively, that is an advantage you cannot afford to give away.

There is a mystique attached to high-tech litigation (HTL) because it is relatively new to the courtroom. The persuasive advantage derived from technology-enhanced communication however, particularly in complex cases, is a clear justification for mastering the use of these powerful tools. Carefully planned legal strategy and strong content remain the hallmark of a solid case. Carefully planned visual strategies and compelling graphics are the hallmark of a persuasive trial presentation.

Preparation Begins With Discovery

Efficient use of technology requires early planning. The organization of case materials is optimized by quality scanning and coding. It is important to choose an imaging firm that can ensure accuracy of the digital product as well as offer

advice on naming conventions and case management options. Attention to these details at the beginning of the case prevents expensive repeat imaging, which often occurs when vendors do not plan for the use of documents as demonstratives at trial. Documents, photos, and images are generally stored on a CD-ROM. A single disc holds up to 17,000 documents. For many small cases this is adequate. Larger cases often require a tower, which can store up to 3.5 million pages.

Imaging and coding are not limited to documents. Video clips, digitized photos and images can also be linked to the document database and accessed instantly during trial, ADR, and depositions. Document management software offers the attorney a robust set of organizational tools. Sophisticated searching and sorting capabilities help the advocate to readily identify fact patterns and case themes.

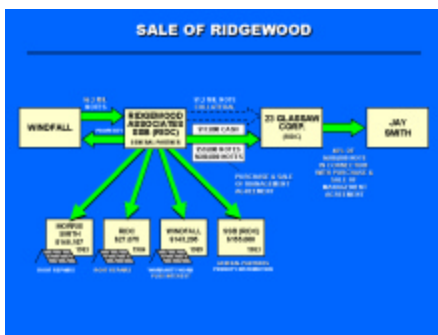
Choose Your Tools

As your case begins to unfold, it is important to establish a well-mapped strategy that integrates case materials with trial presentation options. Plan your use of demonstrative evidence, presentation tools and graphics as carefully as your closing argument. A wisely calculated media mix allows the jury to readily integrate information, resulting in a more in-depth understanding of your case. Mixed media presentations command the full attention of the jury, and as a result, are remembered more easily. As the complexity of your case increases, a sophisticated mix of technology including slides, animations, video and blow-up boards offer a superior visual experience. Digital presentations or slide shows help to teach detail, while boards that remain in view throughout the trial can serve as a road map to reinforce time sequences and relationships. Complicated

technical designs may require animation to simplify confusing product specifications.

HTL takes a multi-media approach to visual communication. Blow-up boards are one of many tools that makeup the total presentation. They are used as summary charts and visual anchors to reinforce critical themes and conclusions. Blow-up boards are helpful for outlining the primary themes of your case, comparative grouping of facts, and timelines.

Digital media such as PowerPoint presentations use technology to teach fine



detail. A skilled advocate reveals facts on the screen slowly and systematically. Jurors viewing a partially empty screen anticipate the revelation of additional facts with increased interest and curiosity. Computer-generated presentations are

interactive and spontaneous. Sound, animation, video, and other special effects entertain the jury. They are both cutting edge and impressive.

It is important to choose technology that is well suited to the material being displayed. For example, use of the screen for review of documents can be impractical. The text is small and, depending on the quality of the scan, often unclear. Imagine watching a television program that is composed solely of large blocks of text with voice-over. Chances are that, before long, you would switch channels. A digital presentation such as PowerPoint is meant to be visually

appealing. The "picture" should be worth a thousand words. A thousand words should not be in the picture.

Digital slide shows should not be viewed as electronic versions of blow-up boards. Many attorneys use PowerPoint to display full-page documents on the assumption that anything digital is more persuasive. This is a tactical error. The educative power of the digital display is in teaching the details. Jurors will read and remember a phrase that is enlarged on the screen. Displaying a full-page document on a monitor is not conducive to learning.

Other effective techniques that are well suited to digital presentation include pull quotes and photo enlargements. Spontaneous zooming in on details in a digitized photo can be particularly dramatic. Split screen depositions that synchronize witness testimony with a written transcript link critical points with the speaker. In cases involving multiple parties, this helps jurors to remember "who said what."

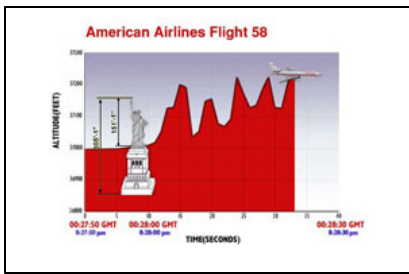
For some kinds of demonstrative evidence, the best option is animation. Hours



Technology Animation

of boring testimony can be eliminated with a brief animation. For example, in a rather complex and dry implied warranty case, animation was used to show the marginal design of a water cooler and to teach jurors about the testing that the manufacturer

required. The animated graphic instantly gave jurors the key facts without boring them with piles of irrelevant mechanical text.



Animation was also used successfully in a case against American Airlines. The attorney for the plaintiffs wanted the jurors to be able to experience what it was like to be on a plane

that descended and ascended more than 500 feet several times in a matter of seconds. After reliving the horrifying event through animation, the jury returned a record verdict. Three-dimensional animation and simulation technologies are an additional display option and are particularly useful in the virtual exploration of crime scenes.

Strategic Graphic Design

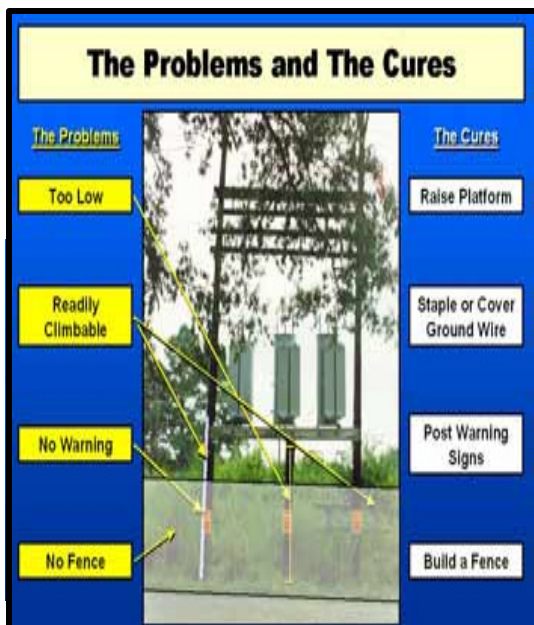
The crafting, pacing, timing and focus of evidence presentation is of particular significance given the diversity of jurors in terms of age and learning style. Litigators experienced in the use of evidence display technology understand that effective digital graphics require careful consideration for seemingly insignificant details such as font size or background color. These decisions cannot be made based on taste or personal preference. Rather, they are dictated by a clearly defined set of guidelines anchored in information design science. The nuances of visual communication differentiate between graphics that receive a cursory glance versus those that leave a lasting impression and follow the jury into the deliberation room.

Persuasive demonstrative graphics are most effective when they address the informational needs of the jury. It is common practice as a trial date nears for an attorney or member of the litigation support team to create a list of graphics

that will be needed to support examination of witnesses during trial. The resulting demonstratives are helpful, but would be far more powerful if they were designed to address the learning needs of the jury. This can only be achieved when the design of demonstrative strategy is consistent with jury research findings and case strategy. Graphics that answer the unconscious, values-oriented questions that jurors have about the merits of your case not only support your oral presentation, but actually stand alone as a resource from which jurors cull information to help them to reach a decision.

The process of designing graphics that address the values of jurors is known as Reverse Engineering the Verdict Form™. Jurors will, by nature, draw upon their personal beliefs when interpreting the verdict form. Reverse Engineering allows you to address their concerns in advance and influence their decision in favor of your client.

An example of this process involves a comparative negligence case, when a



Highlighting the missing safeguards near the regulator station helped jurors to see its easy accessibility. (Yellow highlighting is also suggestive of caution or warning signals.) The white boxes on the right side of the chart "fill in the gaps" for the jury, by defining the simple common sense measures that could

teenage boy was severely burned during a foolish prank as he climbed up an electric regulator station. Research showed that the jury would blame our client for putting himself in danger. Our goal was to help the jury see that a large electric company could be held to a higher standard of responsibility for public safety which

outweighed the delinquent behavior of our client. The attorney therefore had to give them the tools to help them see 'the bigger picture', to look beyond their values regarding a reckless teenager. Our client admitted to the jury that he was partly responsible for the accident. With this admission, the jury was able to move past the blame they assigned to him and consider the liability of the electric company. Reverse Engineering the Verdict Form helped us to craft a visual strategy and to anticipate the language of the verdict form in our graphics. This approach enabled the jury to make a decision in favor of our client.

Collaboration

In preparing for trial, collaboration is a necessity. Because all persons involved in litigation are extremely busy, it is difficult to get everyone together at the same time. Secured communication via the Internet helps to bridge that gap. Internet conferencing and VPN, or Virtual Private Network, are among the solutions currently available. VPN allows distant parties to share information interactively in real time. In addition, VPN provides enormous value in the sharing of documents, transcripts and videos before and during trial.

Trial Environment

The preparation for actual trial presentation goes beyond taking your laptop and boards to court. Technology considerations must be addressed to ensure that your presentation has the maximum impact on the jury. The best presentation will not be effective if the jury can't view it easily. Reviewing and planning for the physical courtroom and understanding the trial environment is critical for success during trial. Some images will not be impressive on a tiny computer screen used by the jury. Also, can the jury see your presentation from all lines

of sight? These considerations, as well as adequate lighting and similar concerns, must be addressed prior to trial.

If the equipment you need in order to develop an effective presentation isn't available, and your firm does not have the technical staff to operate the technology at trial, the rental and temporary hiring of such equipment and services should be arranged. In this way, attorneys can focus on presenting their case while the experts focus on the technical details.

Success Through High-Tech Litigation

Today's high-tech courtroom demands that attorneys be proficient in the use of digital evidence presentation, real-time display of the record, and Internet access within the courtroom. The increased availability of these services and technologies should make their use a routine part of preparing a case. Using High-Tech Litigation strategies can save attorneys time and money, remove conflict, and enhance the attorney-jury relationship. Success in the courtroom will belong to the attorney who employs today's technologies both skillfully and masterfully. State-of-the-art digital trial strategies and Reverse Engineering the Verdict Form™ will leverage your ability to achieve a successful outcome on behalf of your client.