

How Attys Can Modernize Their Trial Presentations

By Sarah Martinson

Law360 (April 24, 2023, 1:27 PM EDT) -- Even though attorneys have many tools to choose from for their trial presentations, some of them are still using paper notes and relying too heavily on PowerPoint or Keynote slideshows, according to industry experts.

Tony Donofrio, chief technology officer at legal support company Veritext Legal Solutions, recently told Law360 Pulse that one reason lawyers are not using newer technologies in their trial presentations is a focus in the U.S. legal system on settling cases.

Donofrio said attorneys often push off trial presentation preparations and don't realize they can use trial presentation tools for collecting evidence and settling their cases.

"If you put a compelling multimedia presentation in front of opposing counsel, showing the Facebook clips of somebody running a marathon while they just said that they were disabled that same day in their deposition, you're settling pretty quickly," he said.

One way attorneys can upgrade their trial presentations is by limiting their use of PowerPoint or Keynote slideshows to opening and closing arguments and using trial presentation software for showing jurors evidence, according to experts.

Shannon Bales, automated litigation support manager at Munger Tolles & Olson LLP and author of "The Trial Presentation Companion: A Step-By-Step Guide to Presenting Electronic Evidence in the Courtroom," said that trial presentation software allows attorneys to store different types of evidence in one place and display them for jurors at any time, in any order, without having to prepare individual slides like a PowerPoint.

"A PowerPoint might take 15 minutes or 30 minutes a page to create," Bales said. "We don't spend even a fraction of that amount of time preparing an image for importing to trial presentation software."

Another way attorneys can modernize their trial presentations is by ditching paper notes for a tablet like the iPad.

Brett Burney, e-discovery expert at legal software company Nextpoint Inc., said an iPad is like a "digital manila folder" where attorneys can keep their notes, store evidence files and operate newer trial presentation software.

Burney added that attorneys can even show judges evidence directly on an iPad, instead of having to hand paper exhibits to the bench.

"Before the iPad, if I was getting ready to go to trial, I would be at my office and I would print everything out and I would put it in a manila folder or a bankers box," he said.

Tara Cheever, co-founder and product manager at litigation software developer Lit Software LLC, said her company's iPad app ExhibitsPad can be used to store evidence that jurors can view during deliberations. iPads have a feature called Guided Access that allows the devices to be locked on one app and password protected so jurors can't access the internet, she added.

Cheever noted that iPads can replace binders with paper exhibits, making the technology environmentally friendly, and allow jurors to review video evidence during deliberations.

During the COVID-19 pandemic, iPads were easier to keep sanitized between witnesses, she said.

"Using the iPad instead allowed you to have that device on the witness table, and then between witnesses, literally just come up with a wipe and make sure it's been sanitized and ready for the next person," Cheever said.

While tablets are good for trial notes, documents and images, trial tech experts recommend attorneys use laptops for videos and older trial presentation software.

Dave DaSilva, vice president of advanced product development at Veritext, said that if attorneys are showing lots of videos and animations during a trial, they need a device that has a powerful video card, like a laptop designed for video editing.

Burney also noted that some legacy trial presentation tools are not compatible with iPads and require more training to use.

He added that if attorneys are using older software for their trial presentations, they should consider hiring a professional technician to be their "hot seat person" who is in charge of operating the tech during trial.

"I would not trust anybody running that [software], unless they've had anywhere from four to eight weeks of training," he said.

Bales said one mistake attorneys make is relying on inexperienced paralegals or associates to handle tech during trial.

She added that an experienced trial technician knows to test equipment before a trial and bring a backup laptop, while an inexperienced associate or paralegal doesn't.

DaSilva noted that when he was a hot seat technician early in his career, he would have all the trial presentation materials on two high-powered laptops and backed up on two external hard drives.

"People without experience tend to just show up and end up with a lot of issues and errors in their presentation," Bales said, adding that studies show jurors don't want to sit through presentation errors.

Whether an attorney uses an experienced technician to handle their trial presentation tech also depends on the attorney's own comfort level and the size of the case, according to experts.

DaSilva added that some attorneys like to and can handle everything in their trial presentations themselves, including the tech, even in large cases.

"If you've gotten yourself to the point where part of your presentation is operating the technology and you're comfortable with that, then there's tools out there for you," he said.

But if attorneys decide to hire a professional hot seat technician, experts recommend hiring them well in advance and practicing the presentation with the technician before coming to court.

"It's really important for trial teams that are using consultants that they get their consultants reserved as early as possible in their case because the good consultants are all getting snatched up to work at trial," Bales said.

While industry experts strongly recommend that attorneys use digital tools, they also suggest that lawyers break up their digital presentations by using other tools, like a document camera, live testimony, whiteboard and timeline or enlarged image on a poster board.

Cheever said that if a case involves mechanical equipment, attorneys can use an Elmo document camera to show jurors an important part.

If attorneys want jurors to remember a specific series of events, it can be helpful for them to put up a cardboard display of a timeline in the background for jurors, but some courtrooms no longer allow attorneys to bring in large boards, she said.

Bales said attorneys tend to "bury their head in the sand" when it comes to trial presentation and would benefit from more preparation.

"If attorneys took this skill in this phase a little bit more seriously, they would present so much better at trial," he said.

--Editing by Marygrace Anderson and Nicole Bleier.