

## Use the best tool for the job: tech options for presenting evidence

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You have a problem. You're going to trial. It may have been a little while since you've gone out. You want to capture the juror's attention—knowing that today's jurors need visuals. But you don't want to spend hours researching the best tools out there—you've got expert depositions and motions in limine to take care of.

Rest easy. We've done the work for you. Here are some options for using technology at trial, from the very simple to the very sophisticated. Each one can be considered a tool. Along those lines, there are different tools for different jobs. One is not necessarily better than another. The four methods we'll look at are PowerPoint or Keynote alone, TrialPad, Trial Director without support and Trial Director with support.

### PowerPoint and Keynote

Let's diverge for a moment and talk terms. PowerPoint and Keynote are Microsoft's and Apple's respective presentation programs. They are good formats for linear storytelling—think opening statement or closing argument—but not well-suited if you decide you want to jump around. If you've sat through any MCLs in the last decade, you've probably seen them in use. For the rest of this article, whenever I refer to PowerPoint, it is shorthand for both.

That said, Keynote is a superior product. But like many superior products, it runs on Macs. If you're part of the 12.9% of the general population using a Mac, more power to you. You paid more for your machine. You have a negligible virus problem. You've got those cool aluminum unibodies. And you can do most things a PC can without too much contorting as long as you can work Boot Camp (and if you don't know what that is, be comfortable with it or look it up.) We PC folks aren't jealous at all and do not frequently find ourselves identifying with John Hodgman.

### Trial presentation software

More terms. Trial presentation software. Unlike PowerPoint, a product marketed to millions of users, trial presentation software is made specifically for us trial lawyers. A much narrower field. The software has the capacity to access a multitude of exhibits in a non-linear fashion. Think jumping from exhibit 8 to exhibit 80 and back again in the time it took to read this sentence. You can play video depositions and display video and exhibits simultaneously. In fact, the systems are bounded chiefly by your creativity and time. I sometimes describe trial presentation software as PowerPoint on steroids.

Sounds fantastic, right? Why use anything else? Imagine hopping into the turret of a main battle tank and trying to get the thing going. Unlike driving a car (this is a PowerPoint analogy if it is unclear), where most of us have some experience, most of us don't regularly operate tanks. Thus, it takes a little training.

There are some other hurdles as well. Microsoft's development budget for user interface design and debugging is larger than some smaller countries' GDPs. Yes, I know—surprising given what they produce, but it is true. But when your market share is thousands of trial lawyers, like trial presentation software, rather than millions like Microsoft, user interface and debugging suffer.

### iPad Applications: TrialPad

In the trial presentation realm, let's first talk iPad applications. TrialPad, available for \$89.99, is the industry leader. Others may be less expensive or offer alternative pricing plans but TrialPad currently has them beat. Note that the application field has rapidly advanced in a very short time and is very fluid. People may not realize that the iPad itself is barely two years old (initial release April 2010). A manufacturer who gets out ahead stands a better chance of maintaining pole position (but it is not guaranteed if one fails to adapt, c.f. Kodak.) Video depositions remain the Achilles heel for iPad applications. We'll discuss this more under options, below. Check in with the nascent apps department every so often though—they may fix the video problem in the coming years.

### Trial Director

The alternative is the old standby, the warhorse trial presentation software that runs off a high-end laptop (geek tip: opt for an upgraded video card or better yet a gaming laptop like Dell's Alienware line for the best video performance.) The two trial presentation industry leaders, akin to Coke and Pepsi, are Trial Director and Sanction. My choice, after a head-to-head trial where I used Sanction and the opposing team used Trial Director, is the latter. In fact, I took the time to purchase and learn Trial Director and dumped Sanction. The main issue for me was stability when playing video. And video depositions, the coolest feature for trial presentation software, are where I experience my biggest pucker factor. Trial Director has never crashed on me in trial when playing video. I cannot say the same for Sanction.

So now that we have our vocabulary and our brands, let's talk about options.

**Option one: PowerPoint or Adobe Acrobat** (requires a laptop that outputs to a projector. Will need a courtroom that has a screen and projector or you'll need to bring your own).

*Best use:* Expedited jury trial or simple trial with no more than 50 pages of exhibits (not to be confused with 50 exhibits) and no video.

*Pros:* Simple set-up without having to learn or buy new software. Inexpensive. If the courtroom has a built-in projector, all you need to bring is your laptop and an exhibit list.

*Cons:* Need a cheat sheet to know what number to type in to jump to the right page. It also takes a little effort to blow up a section of an exhibit in Adobe and is not possible to do so in PowerPoint.

In order to use this method effectively, you'll need to prepare an index of the documents to refer to. The easiest way to do this is to Bates stamp all the exhibit pages in sequential order. Thus, if Exhibit 1 had 10 pages, page 2 of Exhibit 2 would be Bates 0012 in your index. The index should have the Bates number in one column and a brief description of the page in another column. This will allow you to jump directly to the right page. How? In Adobe, you'll need all the documents scanned in as a single pdf. Use the page number box in the upper left window [the box that says 3 / 50 for example when you are on page 3 of 50 pages], type the Bates number you want to get to and hit Enter. Boom. You're on the page you want. Adobe has the added ability of being able to increase the size of the document, something PowerPoint does not provide.

In PowerPoint, you'll make each document page a separate slide. To jump to a specific slide while in the presentation you simply type the slide number (the Bates number from your index) and hit Enter.

**Option two: TrialPad** (requires an iPad that outputs to a projector. Will need a courtroom that has a screen and projector or you'll need to bring your own.)

*Best uses:* Expedited jury trials, cases without video deposition, or cases where every video excerpt is agreed to well in advance and you will not have to modify in trial to impeach a witness. If you are not using video, it will be far easier to learn and use TrialPad yourself than using Trial Director unsupported.

*Pros:* Ease of use. TrialPad is somewhat intuitive if you are familiar with the iPad. It does not have all the bells and whistles of Trial Director, which for most trial lawyers is actually a good thing. Less to learn and less to screw up.

*Cons:* Video depositions. Making modifications to video excerpts requires a fair amount of fiddling around and cannot easily be done on the fly. Until this aspect is remedied I recommend against using it in cases where you have a witness videotaped, think you may need to impeach the witness, but don't know every piece that you'll need to impeach.

**Option three: Trial Director without technical support** (requires a laptop that meets Trial Director's technical specifications. Will need a courtroom that has a screen and projector or you'll need to bring your own. Video deposition playback requires high quality speakers—this does not mean something from the computer store. See the link to my checklist below if you are trying to figure out what to use.)

*Best uses:* Cases with video depositions where you may need to make modifications in the courtroom or during a break. Examples: difficult defense counsel who will try to throw a monkey wrench into your examinations or where there's the potential for lots of impeachment.

*Pros:* This is the main battle tank for trial presentation. Used properly, you will be able to instantly call up an exhibit, blow the specific section up so the jury can easily read it, and do devastating video impeachments of witnesses.

*Cons:* This is the main battle tank for trial presentation. And like I said above, learning to operate a main battle tank effectively requires training. That includes keeping current, which if you don't get out to trial regularly can mean a bit of a boot up before you go.

**Option four: Trial Director with technical support** (requires the funds to hire technical support or the willingness to associate in counsel who is technically sophisticated.)

*Best uses:* Large cases where you don't have the time or ability to be your own tech guy and where the exposure justifies the expense of outsourcing technical support.

*Pros:* You have the ability to put on your trial without having to worry about any of the technical equipment or attendant issues. Also known as fewer ulcers.

*Cons:* Expense.

### Final words

Using technology in front of a jury requires planning, testing and having backup plans with backup plans. Try putting your equipment together a few different times before you go into court. If you're tapping into courtroom equipment, get permission to go in to test and practice well before court time. For key moments—opening or closing for example—consider a second laptop and projector or be prepared to give your presentation orally if everything fails. And for Pete's sake, if you are going to the trouble of playing video depositions, use real speakers. I published an overly cautious checklist and equipment list a few years ago. The models and pricing have changed but the equipment list and minimum technical specifications remain valid. It is available on our firm's website: <http://bit.ly/xMaEVo>.

The last thing I want people to take away from this is a sense of being overwhelmed. You can or your associate can do this if you take the time and properly plan. However, if you have trial in less than a week and are thinking about trying new software, stop. It will fail in front of the jury. Hire a tech or figure out another way.

If you decide you're going to go it alone, you need to know what you are getting into. So figure out the way that will work best for you, engage your jury, and bring back a just verdict for your client.

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