
Trial Presentation Made Easy

Steve Larson and Angel Falconer, Stoll Berne



Steve Larson

Jurors, trial judges, and arbitrators have grown to expect technology in the courtroom to assist with the visual communication. As a result, in addition to developing the visual story, the lawyer also has to work out the logistics for presenting the trial exhibits, demonstrative aids and other visuals that will be used at trial.



Angel Falconer

With all of the new apps available for the iPad and other tablets, a lawyer can do much more visual advocacy on his or her own. However, for cases with a large number of trial exhibits, or cases with fact patterns that involve hard to grasp issues that are going to need a little more sophisticated demonstrative aids to explain the complex concepts, or cases with videotaped testimony, an assistant that can rapidly find and show trial exhibits on the fact-finder's monitors, connect a piece of testimony to a demonstrative exhibit and present it to the fact-finder, and pull up videotaped depositions

tion testimony to impeach a witness will be very valuable.

There are many very capable independent third parties offering their services to assist trial lawyers with trial presentation. However, we have found that having an in-house paralegal who is savvy with the current trial presentation computer software can provide a number of advantages over using an outside third-party trial presentation consultant.

First, an internal paralegal may be as familiar with the documents in the case as the lawyer, if not more so. Familiarity with the documents makes the process of directing a paralegal to a specific section of a document to call out or highlight for the fact-finder much less cumbersome than working with someone who doesn't have any knowledge about the case. That also makes it easier to communicate on the fly about what you are trying to do when you suddenly decide there is something the fact-finder is not getting that you need to emphasize.

Second, the internal paralegal will have had a more hands on role in getting the case ready for trial, so he or she will be familiar with the witnesses, themes of the case, and the points demonstrative aids are intended to emphasize. We frequently have paralegals suggest that we consider using a certain trial exhibit as we are doing cross-examinations. After your paralegal gets more experienced, he or she may also be able to provide you with feedback from a lay person's perspective. An outside independent contractor may be reluctant to tell the trial lawyer that an argument is missing the boat, where an internal employee, who may have had a longer relationship with the lawyer, may feel more comfortable offering advice.

Third, it is much easier to practice opening statements and closing arguments when you are working with someone in-house. Since our paralegals are in the office with us every day, we can practice different approaches days or even weeks before the trial. It is also easier to make last-minute changes to demonstrative aids and the order that visuals will be presented during opening statements and closing arguments if you are working with someone in-house. This repeated exposure to working together should make your presentation smoother than it might be with an outside third party. Jurors, judges, and arbitrators notice how well you work with your paralegal. A number of jurors have told us after trials that they were impressed how our attorney and paralegal team worked together, and how they appreciated the fact that the paralegal could display evidence on the monitors promptly. We have even had arbitrators (who were also practicing trial lawyers), opposing counsel, and third-party consultants approach our paralegals to ask about using the computers and software for the visual presentations.

Having a paralegal learn to use the computers and software for visual presentations may seem like a big project, but a few simple steps can make a computer savvy paralegal ready to be a top-notch trial presentation assistant.

The two trial presentation programs we have used are TrialDirector and Sanction. Both offer customized training solutions, including on-site training for lawyers and staff and thorough written materials. But practice is the real key to success. Starting as early as possible with building the trial database and practicing with case evidence in the database will

give the paralegal the opportunity to see what's working well, what's not working at all (including technical problems), make corrections and adjustments, or seek out more training well in advance of trial.

We have found that a good way for both the lawyer and the paralegal to practice is to run through opening statement several times before trial. Going through it together multiple times will help the lawyer and paralegal learn the best ways to communicate with each other and the jury will appreciate a well rehearsed and seamless presentation. A paralegal who is familiar with the case may also be able to offer suggestions to help the lawyer refine the message. We often invite others to sit in on a practice run as well.

Courtroom logistics are also a very important part of the trial presentation that should not be overlooked. Coordinating with courtroom personnel in advance to make sure that equipment and additional furniture can be accommodated is critical (there might not be room at counsel's table for your paralegal). Go as early as possible to visit the courtroom to get a feel for the layout, including where to access electrical outlets, where to set up a projector or monitors, the best location for any demonstrative aids, and even map out where the attorney can best engage the jury while still communicating well with the paralegal. In federal court, the courtrooms have much more technology available for the parties to use, but in state courts you will often need to make arrangements with opposing counsel to share some of the technology – like monitors. If possible, set up and test all equipment the day before trial to prevent disasters from happening in the first place.

Of course, there is no replacement for experience, but the more you practice together and the sooner you both get in the courtroom, the more confident both of you will be in each other's abilities. A little extra planning can help settle a lot of nerves.

In summary, given the potential for better performance, increased satisfaction from the fact-finder, more peace of mind for the trial lawyer, and lower costs for the client, using an in-house paralegal for trial presentation is an alternative that should be considered.

Steve Larson is a Shareholder at Stoll Berne who specializes in complex litigation. Angel Falconer is the Litigation Support Manager at Stoll Berne.