

# Presenting Trials In the E-Courtroom

“Old Dogs, New Tricks, Same Rules”

A Short Introductory Course  
on  
The Technology and Tools of the  
Electronically Equipped Courtrooms  
In Maricopa County, Arizona



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Presented by

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Phoenix, Arizona

## **Presenting Trials in the E-Courtroom**

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Maricopa County Superior Court

**By**  
**Don Stevens**

"The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to make the interrogation and presentation effective for the ascertainment of the truth, avoid needless consumption of time, and protect witnesses from harassment or undue embarrassment." Rule 611 (a) Arizona Rules of Evidence

"Since seeing is believing and demonstrative evidence appeals directly to the senses of the trier of fact...this kind of evidence possesses an immediacy and reality which endow it with particular persuasive effect." McCormick, *Evidence* 3<sup>rd</sup> ed., sections 212-217, p. 664.

"The way to persuade someone is not to beckon him to come and look at things from where you stand, but to move over to where he stands and then try to walk, hand in hand, to where you would like both of you to stand." *The Best of Sydney Harris* (1976)

"Tell me and I will forget.  
Show me and I will remember.  
Involve me and I will understand."  
Chinese Proverb

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## 1. **The E-Courtroom Systems**

- 1.1. **Current Installations:** 4 Courtrooms, 4<sup>th</sup> floor ECB; civil divisions. Currently assigned to Judges Donahoe, Myers, Santana and Albrecht; 4 courtrooms, 7<sup>th</sup> floor CCB; 1 civil, 1 family court, 2 criminal divisions. Currently assigned to Judges McNally, Trebesch, Cates and Yarnell. *Note: Judicial rotations are currently scheduled for July 1, 2002, so be sure to verify e-courtroom assignments.* Courtrooms are planned for construction in the Northwest division. Four electronic courtrooms are planned for installation at the new Northwest division. The Southeast division has one existing electronic courtroom with an older system; two additional courtrooms for Southeast are planned and the existing electronic courtroom will be upgraded.
- 1.2. **Systems in Place:** Jefferson Audio Video System (JAVS®) and Exhibit One®.
- 1.3. **JAVS® Description:** a system of video cameras and interconnected microphones that automatically record all proceedings in court or in chambers.
- 1.4. **JAVS® Operational Features: Audio System**
  - 1.4.1. Approximately eight (8) microphone locations in the courtroom: witness, jury box rail (3), counsel tables, podium, and judge's bench.
  - 1.4.2. The system of microphones is very sensitive. More than one microphone may pick up all of the audible sounds in the courtroom, no matter how faint.
  - 1.4.3. The first audible sound on a microphone automatically selects the video camera that is connected to that microphone to record the source of the sound.
  - 1.4.4. The microphone does not distinguish between intentional sounds and incidental or accidental sounds. Incidental noise may be sufficient to trigger the video recording device.
  - 1.4.5. The microphone activates the camera on a new sound, and if new sounds occur close in time, the camera selector switch will change camera views based on the sounds. If more than one person speaks at once, the first detected sound will select the camera and remain selected until there is a new sound source.
  - 1.4.6. The microphones and video cameras are linked. In a standard installation, the microphones on the jury rail and the plaintiff's counsel table are linked to Camera 2. The microphones on the lectern and defense counsel table are linked to Camera 1. The microphones for the witnesses and for bench conferences are linked to Camera 3. The main witness microphone is linked to Camera 4. The main microphone for the judge is linked to Camera 5. A diagram of the video recording field is included with these materials.

- 1.4.7. *Practice Note:* All of the audio, from all microphones, will continue to be recorded simultaneously, but only one video camera records at any one time. The video record may not include the main speaker, (a) if there are competing sound sources, or (b) if the speaker's voice is being picked up by some microphone other than the one closest to the speaker.
- 1.4.8. *Practice Note:* There is a mute button on the counsel tables that overrides the counsel table microphone only as long as the button is held down. The mute button does not disable any nearby microphone, so counsel's conversation with his client or staff may be heard, even if the mute button is held down. There are three microphone sets on the rail of the jury box. Due to the compact size of the courtroom, the microphones on the jury rail can probably pick up audible sounds from the plaintiff's counsel table.
- 1.4.9. In addition to making an audio record, the microphones are also connected to the PA system, including the speakers throughout the courtroom. Grumblers, beware.
- 1.4.10. There is an infrared audio transmitter in the courtroom, located above the judge's bench, so a hearing impaired (or sleepy and inattentive) juror can be given a set of wireless headsets that receive the audio signal. The input from the various microphones is easier to hear because the headsets block other audible distractions.
- 1.4.11. The judge has a bench conference button that supplies a static sound, i.e., white noise, so that the audio speakers in all other parts of the courtroom will not transmit the audio from the microphone on the judge's bench. The bench microphone will record bench conferences on the JAVS® system.

## 1.5. **JAVS® Operational Features: Video System**

- 1.5.1. Five (5) courtroom video cameras. Each is fixed to record a single location. The cameras do not have the ability to pan side to side or to zoom closer to an object or person. The video cameras are intentionally aimed away from the jury box, to preserve juror identities, although the front of the jury rail is visible.
- 1.5.2. In a standard installation, Camera 1 records the podium and defense counsel table. Camera 2 records plaintiff's counsel table. Camera 3 records bench conferences. Camera 4 records the witness. Camera 5 records the judge.
- 1.5.3. *Practice Note:* There are some areas of the courtroom that will not be recorded on video because of the way that the cameras are aimed and the fixed field video recording. This is usually because the sound is picked up by a microphone that is connected to a different camera, and no camera records

the entire courtroom at once. This will be likely to occur when the speaker is moving in the courtroom. Being aware of the camera views will ensure that an adequate video record is made. The camera that records the podium area also records the entire courtroom, including the defense table and the gallery.

- 1.5.4. The video recording system is capable of simultaneously recording up to four (4) videotapes at once. In addition, the system makes a digital record of the audio and video. The Clerk will normally make two videotapes of the day's proceedings, one for the record and one as a backup. Two additional videotapes may be recorded for use by the parties.
- 1.5.5. The JAVS® system also includes a camera and microphones in the judge's chambers for conferences and arguments. In practice, few judges are using the in-chambers recording system.
- 1.5.6. The JAVS® system recording includes on-screen identification of the source of the audio and video recording. Each microphone and camera is assigned an identification number i.e. microphone 1 or camera 3. The on-screen recording includes the time of the recording, and the camera or microphone being recorded
- 1.5.7. Each camera is linked to at least two microphones, all within the camera's field of recording. The recording camera is selected automatically by the audio switching device linked to the microphones. The judge has a control button panel that will allow one video camera to be locked on a single location (i.e. the podium). If one camera is locked, no other video cameras will record, but all microphones will continue to record audio.
- 1.5.8. *Practice Note:* In the usual case, it may be a good practice to request that the judge lock the witness camera because that is the most important evidence in the case for purposes of the appellate record. For the appellate record, the automatic switching operation will be very aggravating because of the video jumping between sound sources, particularly in spirited exchanges between a witness and counsel. On the other hand, if an opponent is misbehaving and creating appellate error, then a full video record with switching will be useful.
- 1.5.9. *Practice Note:* Due to the way that Camera 2 is aimed, if the witness stands directly next to or leaning over the jury rail to demonstrate or explain the testimony, there will not be any video record of the testimony. If a video record of the witness demonstration is needed, the witness should be instructed to stand several feet back from the jury rail.

- 1.5.10. The jury box is equipped with color monitors. Jurors do not have touch-screen capability. The jury monitors do not have sound. Sound is supplied through the courtroom sound system.
- 1.5.11. Juror monitors only receive inputs from the podium devices such as the ELMO®, the Boeckeler Light Pen®, audio devices like tape recorders, VCR, or computer. Jury monitors will display the on-screen annotations.
- 1.5.12. *Practice Note:* Neither the jury monitors nor those at counsel tables will display any part of the video recording being made on the JAVS system. The actual video recording of the proceedings is contemporaneously displayed on the small monitor on the judge's bench. The video record of the proceedings can also be displayed by having the judge direct the display to the larger television monitor that is usually on a portable cart in each courtroom.
- 1.5.13. *Practice Note:* There is no express rule governing when, or under what circumstances, the video record of the proceedings may be replayed for display to the jury. Particularly in a longer trial, it would be possible to display video clips of the actual courtroom testimony of the witness for impeachment, or during closing argument. The trial judge has the discretion under Rule 611, ARE, to decide whether such use is a fair extension of the systems capabilities, or whether it gives undue emphasis to a portion of the testimony. Likewise, it is unclear whether or not a jury would be able to request that the video record of any particular witnesses testimony be replayed, in whole or in part, for the jury's use during deliberation. Obviously, the video record would not be sent into the jury room, but if the court determined that a review of the video record would be helpful to the jury, the jury would be brought into the courtroom and the video record would be displayed in the same fashion as additional instructions, or under those limited circumstances when the testimony of a witness is read back to the jury by the court reporter. The immediate availability of the audio and video record, together with the fact that the record is actually what the jury heard and saw, may make it more likely that the court would permit a display after review by the court and counsel out of the presence of the jury.
- 1.5.14. *Practice Note:* If you plan to play any portion of the digital recording in court, you should notify the court and your opponent. Issues of fairness, completeness, relevance, materiality, and repetition are fair considerations for the judge prior to the display.

- 1.5.15. The judge has a small "palm-type" video control device on the bench that (a) graphically displays all of the recording source locations (i.e. podium and counsel tables) in the courtroom and (b) allows the judge to enable or disable any or all display locations. The judge must enable the video display from the podium, for instance, before it is displayed to the jury.
- 1.5.16. *Practice Note:* When the questioner is standing at the podium, and the computer, VCR, or camera device are activated, the video display is usually visible at the podium, at both counsel tables, at the judges bench, and at the witness monitor. The jury display is not simultaneous, nor automatic. If documents are marked in evidence, or otherwise admitted by the court, request that the judge enable the juror display.
- 1.5.17. *Practice Note:* It is very important to be aware of whether or not the juror display is activated, particularly when using documents that have not yet been admitted into evidence. If a non-admitted document will be displayed, asked the court to disable the juror display while the proper foundation is laid. After the foundation is laid, and the document is admitted by the court, the document may be "published" to the jury by simply requesting the judge to enable the juror display.
- 1.5.18. *Practice Note:* To avoid inadvertent displays, a prudent practice will be to ask the judge to turn off the juror display as soon as the witness completes the testimony. This will prevent a displayed image from remaining on the juror's screen while unrelated testimony is obtained from the witness. The system automatically turns off the gallery display monitors if the judge turns off any presentation or recording source. The judge must specifically re-enable the gallery display to restore it after a recording source is turned off.
- 1.5.19. The JAVS® system allows the judge to have immediate access to an "instant" replay of the previous proceedings, such as the last question or the foundational basis for an opinion. At a bench conference, the judge can replay the JAVS® audio/video recording in thirty-second segments, up to a total review of five minutes without the need for a full search. A search for testimony more than five minutes prior will require a recess while the audio/video record is replayed. The clerk's index will be helpful in locating testimony for review during longer trials.



- 1.5.20. *Practice Note:* The replay from the JAVS® system cannot be displayed on the monitors in the jury box. If display of the replay is needed, the court and counsel may review the testimony at a bench conference. If the testimony is to be displayed to the jury, a separate courtroom monitor is usually available for that purpose.
- 1.5.21. *Practice Note:* During the replay of prior testimony, the audio recording system is still active, so counsel should remember that they are still “on the record” at all times, even during a replay of prior testimony.
- 1.5.22. Reviews of prior testimony can be easily accomplished because key events are indexed onto the recording system and become part of the record. The JAVS® recording devices are linked to a courtroom record index system called “Autolog”®. The clerk manually creates the index using the description of the event (i.e. opening statement, direct examination, etc.) and the start and stop time of the event.
- 1.5.23. The clerk can produce a printed index list of all recorded events. The list is called an “HTML log”. Each descriptive entry is “linked” to the specific audio and video segment. When the HTML log is displayed by the CaseViewer® software, the links can be selected, and the system will locate and play to the selected video segment on the CD. A search of the videotape of the record is performed using the time entry index, and fast-forwarding to the correct time entry.
- 1.5.24. *Practice Note:* At the present time, there is little uniformity in the methods used by the clerks to describe key events. During the pretrial visit to the courtroom, it may be helpful to ask to speak to the court’s courtroom clerk (or other staff person responsible for making the index) about the method used, or just ask to see an index from a different proceeding.
- 1.5.25. *Practice Note:* It may be possible to obtain a more detailed index of key points, by asking the court’s clerk to “mark” a key portion of the testimony by entering a “blank” description. Under normal conditions, the clerk decides how to describe a particular event, such as direct examination, cross-examination, or by reference to a specific exhibit. During the testimony, the clerk has the index displayed on the monitor, and makes appropriate descriptive entries for each event. Advise the clerk, in advance, that there may be specific portions of the testimony that you would like to be able to locate later, and ask the clerk to treat your request to “mark” a specific portion of the testimony as a separate event. Then, when you review the

Autolog index, your "marked" segments will appear in the index, and you will be able to quickly locate them when you review the digital recording.

- 1.5.26. JAVS® has a free program called "CaseViewer"® which is needed to take full advantage of the system features. It may be downloaded for free from Jefferson Audio Video. The CaseViewer® software is necessary to make the audio/video record searchable according to the clerk's HTML log. The program may be downloaded at [www.javs.com](http://www.javs.com), and selecting the support tab and downloading CaseViewer ®. The software must be loaded on any machine that will be used to display the audio and video record.
- 1.5.27. Microsoft provides a free program called Windows Media Player that is necessary to play the video clips. It may be downloaded from [www.microsoft.com](http://www.microsoft.com), and navigating to Downloads section, then entering the name Windows Media Player in the product search box. The current version as of this writing is 7.1.
- 1.5.28. *Practice Note:* The user must have the CaseViewer® software and the Microsoft Windows Media Player® installed on the display computer (home or laptop) to take full advantage of the system capabilities to review a JAVS CD with the digital record of the proceedings.
- 1.5.29. The audio or video record is available for review by the parties or by counsel at the end of each court day upon request.
- 1.5.30. *Practice Note:* A videotape copy may be obtained by counsel **if** a blank VHS videotape (not supplied by the court) is given to the clerk **at the start of the proceedings**. This will become one of the simultaneous video recordings of the proceedings (see 1.5.4, above). In order to obtain the best quality recording, a Maxell® or Fuji® Super HG 120 (VHS)(SNG T-120) or equivalent must be provided. *Caution Note:* If the party does not provide a blank tape, there is no ability to obtain a high-speed copy of the videotape at the end of the day.
- 1.5.31. *Practice Note:* A CD containing all of the audio and video, and including the Autolog® HTML log of the separate events may be copied at the end of the proceedings, in about 20 minutes, **if** the clerk is given a recordable CD. (not supplied by the court).
- 1.5.32. *Judge's Note:* Standard preliminary instructions generally tell the jury that there is no transcript of the proceedings available, and that they will have to rely on their memory, their notes, and the notes and memories of fellow jurors. Some consideration of the quality of the recording and the risk of undue emphasis may need to be weighed against the reasonable and more

accurate repetition of the testimony. Arguably, the video replay is less prejudicial and more accurate than counsel's recitation of the testimony.

**1.6. Exhibit One® Components: General Information**

- 1.6.1. The other half of the courtroom system is the evidence presentation system. Courtroom display tools including an ELMO® device, a Boeckeler® Light Pen, a VCR, and various input jacks for computers and audio equipment.
- 1.6.2. The Exhibit One ® system is housed in a dedicated podium, in a fixed position in the middle of the E-courtroom. The podium rotates so that the lawyer may orient the podium to face the court, the witness or the jury. The podium has a large work area, and it includes a built-in display monitor. The monitor displays the video images that are being displayed, or are available to be displayed on the JAVS® system. The podium monitor screen is smaller and will seem darker in display than the other display monitors. The jury display is almost always much better than the podium display may indicate. There is a computer video plug and an audio plug on the podium that allow audio and video to be connected to the display system. There is sufficient work surface for notes or a laptop computer.
- 1.6.3. The ELMO® device is housed on a large pullout shelf on the right side of the podium. The ELMO® device includes an extension arm for the camera head, and extension light bars for illuminating the display. Great care should be exercised when setting up or taking down the ELMO® device, including the camera head and the light bars. Court personnel will usually be responsible for setup and storage of the device.
- 1.6.4. The ELMO® display options include upper illumination for objects and opaque papers, lower illumination for transparencies and x-rays, and reverse illumination for displaying dark objects. There is an auto-focus button as well as a manual focus button located on the right side of the device display panel. For objects, manual focusing may be necessary for close-up views because the depth of field of the camera head will usually focus best on the closest part of the object.
- 1.6.5. Under the platform for the ELMO® device, there is a VCR. It is a standard VCR with no special features. To select the VCR display, the VCR control panel button must be pushed.
- 1.6.6. *Practice Note:* If a display problem occurs, particularly when switching from the computer to the ELMO and back, check to be sure that the correct video display source is selected from the control panel.

## 1.7. The Exhibit One Components: Control Panel

- 1.7.1. The control panel for selecting the display source from the podium only is located on the lower shelf of the side pullout drawer that houses the ELMO® and the VCR. It has four buttons to select one of four input source devices: labeled: ELMO®, VCR, computer, and videoconferencing. The display from either counsel table can only be enabled by requesting that the judge select the counsel table display on the bench palm-type device. In this way, there are three potential display sources for computer presentations.
- 1.7.2. To display information from a particular source, the proper display button must be selected, i.e. a document may be placed on the ELMO®, and the ELMO® may be on, but the display will not be shown on the monitors until the ELMO select button is pressed on the control panel.
- 1.7.3. A quick-reference card will usually be found on the pullout shelf to assist the user with specific directions for each display device.
- 1.7.4. *Practice Note:* Each location is considered a separate display source. The podium sources are not the only input sources. For instance, there is a computer input cable at each counsel table that is a separate source from the computer cable at the podium. Each lawyer may thus use a personal trial presentation system with a laptop computer directly from counsel table rather than moving to the podium.
- 1.7.5. *Practice Note:* Only one display source at a time may be displayed (i.e. the ELMO® or the computer). Switching between two podium sources can be done by (a) using the selection button on the control panel, (b) asking the court to enable or disable a particular source (i.e. the podium or counsel table), or (c) using trial presentation software that allows more than one source to be displayed simultaneously or sequentially.
- 1.7.6. *Practice Note:* The display button system may be used to prepare the display before it is actually shown to the witness or to the jury. For instance, the foundational questions could be asked by the lawyer standing at the podium, using the ELMO® device, while the litigation assistant was working on the laptop at counsel table to prepare the next computer display of a document or presentation slide. When the questioner was ready, the computer button on the control panel would be selected to display the output from the computer, or the display from counsel table.

## 1.8. The Exhibit One Components: ELMO®

- 1.8.1. The ELMO® is a projection device with a high quality camera head that allows the display of plain paper documents, translucent documents (transparency documents or x-rays) and tangible objects, with the ability to enlarge the display for more detail.
- 1.8.2. The item is placed on the ELMO® device, and the upper or lower light source is selected from the front control panel on the device. The object is clearly displayed on the individual monitors in the courtroom. The zoom feature of the device is used to enlarge a specific portion of the object. In courtrooms that are equipped with the Boeckeler Light Pen® or touch-screen technology, the witness or the lawyer may annotate the screen image by applying highlighting or reference marks. The jury is able to see the object while the witness describes it.
- 1.8.3. The advantage of the ELMO® display device is that it is easy to set up and to operate, even by the inexperienced lawyer, litigant or witness. Documents do not require special preparation. The device allows the display of both paper and transparencies of documents or x-rays.
- 1.8.4. There is a set of control buttons on the top front of the device. Each button is clearly labeled. An auto-focus button on the right side of the Elmo device control panel allows the user to easily produce a clear display. Manual focus is available for tangible objects with multiple focus points. There is a zoom button (labeled "tele" or zoom in and "wide", or zoom out) that allows excellent close-up views of any item.
- 1.8.5. One possible disadvantage of the ELMO® display system is that it may require placement and adjustment of each document, including positioning, focus, and zoom, unless care is taken to have all documents in the same format. See presentation display tips below. Another possible disadvantage of the display system is that at full zoom on a document, the display will only be four inches by 6 inches in size, cutting off or cropping other portions of the document. A full-page display of a standard 8 ½ by 11 document will not be sufficiently magnified to be easily readable.
- 1.8.6. *Practice Note:* Darker documents are somewhat harder to display. These items may have to be displayed using the reverse illumination feature that shows all dark areas as light and all light areas as dark.
- 1.8.7. *Practice Note:* Each document must be removed before the next document may be displayed. Paper management during trial presentation remains an important issue.

1.8.8. *Practice Note:* Another possible disadvantage with the ELMO® display of tangible objects is that the object remains on the device. The witness may point to what is displayed on the monitor and may use the touch screen annotation to point out various features of the object. The witness has no physical control over the position or orientation of the object. There is a potential for delay or confusion if the witness has trouble communicating display directions to the lawyer at the device. If an object must be disassembled to allow a full explanation, the lawyer, not the witness, will be responsible for the work. For tangible objects that can be left in one position, however, the visual display plus the ability to annotate the display make the ELMO® a valuable addition to the modern courtroom.

#### 1.9. **Exhibit One Components: Miscellaneous**

1.9.1. The JAVS® audio/visual recording system allows multiple audio or video inputs. Input from the microphones is recorded at all times.

1.9.2. There is an audio input jack on the podium so that a tape recorder output could be amplified through the system. A 1/8 inch audio jack is required. The amplification may not be sufficient for easy listening so be sure to test the sound output quality.

1.9.3. The trial presenter must have a laptop computer in order to retrieve and display the images in the JAVS® audio/video recording system. A laptop computer is not provided by the court. There are third party vendors who will rent both equipment and operators, so that the technology could be used even in a single case without the lawyer having to become fully familiar with the operational features of the software.

1.9.4. The courtroom is equipped so that no additional projectors, screens or other equipment are required. The user attaches the appropriate audio and video cables and the computer display is shown on the system.

#### 1.10. **Exhibit One®: The Annotation Tools**

1.10.1. The Exhibit One® system also includes a feature that allows the lawyers or the witness to annotate or mark on their own monitor screen to illustrate a point. The display monitors for the clerk's desk, the judge's bench, the jury box and the gallery do not have the annotation feature. The judge's control panel turns these displays on or off.

1.10.2. The annotation feature means that when a document or object is displayed on the video display system, using the ELMO® or any other input source, the witness may use a fingertip to point out portions of the display. A single short tap will automatically produce a small arrow, always with a slight orientation

to the upper left. A longer press on the screen will result in a single dot. If the finger is dragged along the screen surface, a line will be drawn. The color of the line may be selected, including red, white, yellow, black, magenta, green, and aqua blue, by touching the lower left corner of the screen. The monitors on the two counsel tables have the same touch screen capability and controls.

- 1.10.3. *Practice Note:* All monitors simultaneously display the results of the touch-screen annotation. It is important to remember that the screen annotations do not automatically appear on the JAVS® audio/video recording. There is no automatic record of everything that is displayed to the jury through the use of the ELMO device or the VCR.
- 1.10.4. *Practice Note:* It is possible to make a record of the annotation display in two ways. First, the courtroom may be equipped with a screen printer that will make a color "photo" of whatever is being displayed at the time the request is made for a screen print. The print is only a single "snapshot" of the annotations made by the witness at that moment, but may be all that is necessary to preserve the record. The screen print will include all of the colors the witness used. Good record-making technique, such as describing the annotation colors and locations will still be helpful. The screen prints, like other computer printed photographs may have a tendency to fade so the colors and detail on the print may not be perfectly preserved for the record. The screen print should be marked as a separate exhibit for purposes of preserving the record. The screen print may be marked for identification or for admission into evidence.
- 1.10.5. *Practice Note:* It is currently possible to make a full dynamic recording of the display from counsel's computer (such as PowerPoint® or trial presentation software, videotape or other display) for purposes of the appellate record. This can be done by asking the judge (or the courtroom staff person responsible for controlling the system) to select and lock Camera 6. When this is done, the video display is recorded on the video portion of the record. The audio remains live at all times, but no other video input will be recorded while Camera 6 is locked. Future courtroom installations will include the ability to record the video display from various sources.
- 1.10.6. *Practice Note:* There is little or no uniformity between the various divisions of the trial court as to the requirement for pretrial disclosure of PowerPoint presentations. Some judges require the entire presentation to be given to the opponent in advance of the display during trial. This raises work product and fairness issues. Alternatives to full advance disclosure include asking the

court to review the slides in an *in camera* review, or a green to mark a complete copy of the presentation as part of the record, after the presentations given, or at the very start of the presentation. Any of these alternatives would preserve the traditional sanctity of the outline, key points and strategy of the opening statement in closing argument. This issue should be clearly defined in a Rule 16 pretrial conference. Be prepared to anticipate the courts concerns and be ready to adapt to the limitations the court may impose.

- 1.10.7. Touch-screen capability at the podium is obtained by use of the Boeckeler Light Pen®. The point of the pen can be used to tap directly onto the glass monitor screen. For an arrow, tap the screen once. For a dot, tap and hold the pen on the screen. For a line, circle or other mark, hold the tip of the pen on the screen and move the pen until the desired shape is obtained. Colors for the line or mark are selected by holding the button on the barrel of the pen, and then tapping the screen to cycle through the available colors. Once the color is selected, the draw or point function will work in that color. It is recommended that one color be used for annotation throughout the trial, simply for ease of reference. Separate colors may be used if more than one witness is using the same diagram, or to illustrate the positions of various witnesses to an event.
- 1.10.8. *Practice Note:* The Boeckeler Light Pen is very difficult to control accurately on all portions of the podium screen. It is possible to make either a dot or an arrow without much difficulty. Lines and circles may sometimes have a tendency to appear other than where the pen is pointed and it can be very disconcerting to the examining attorney. The solution is to practice before trial in the specific courtroom and if the podium light pen is not working accurately and predictably, find another way to point out the relevant information to the witness.
- 1.10.9. All touch-screen annotations can be erased. For the touch-screens at the counsel table and the witness stand, touching the upper right-hand corner of the screen (not the monitor case) once will erase the last mark or line drawn. All annotation marks may be cleared at once by touching the lower right-hand corner of the screen. Each screen has clearly marked labels for these functions.



1.10.10. From the podium, the last annotation mark can be removed by pressing the button on the barrel of the Boeckeler Light Pen once. Pressing the button and holding it down will remove all annotation marks. Neither the judge nor jury has touch-screen annotation capability.

1.10.11. *Practice Note:* Any person, from any touch-screen location (witness, podium, counsel tables) can remove annotation marks. The judge also has the capability, using the display control panel on the bench, to disable the entire displayed video input from any device. This allows the court to review the record before ruling on pending objections.

## 2. **Judicial Administration Issues in Technology Presentations**

2.1. There is no specific rule that addresses the pretrial disclosure of electronic presentations, although most of the Arizona Rules of Evidence and Civil Procedure are readily applicable or adaptable to the electronic courtroom.

2.2. The Arizona Rules of Civil Procedure require that each party set forth a description of “any tangible evidence or relevant documents” that the disclosing party “plans to use at trial.” Rule 26.1(a)(8).

2.3. The Rules of Civil Procedure require disclosure of other “documentary information” that is “believed to be relevant to the subject matter of the action.” Rule 26.1(a)(9).

2.4. Similarly, the Rules require that when information is withheld from disclosure or discovery based on the claim that it is privileged or subject to exemption as trial preparation material, the party is required to provide “a description of the nature of the documents, communications or things not produced or disclosed that is sufficient to enable other parties to contest the claim.” Ariz. R. Civ. Proc., 26(b)(3), 26.1(f). The court may decide to require the party using the technology to submit the material for *in camera* review prior to use.

2.5. A party may not use “information” first disclosed fewer than 60 days before trial, except upon a showing of “good cause.” Ariz. R. Civ. Proc., 37(c). This rule supports the reasonable expectation that the initial disclosure of the intention to use a computer in the presentation of evidence may not be made by the party on the first day of trial.

2.6. The Rules require that “documents and objects offered in evidence, whether admitted or rejected, shall be marked as exhibits or for identification, and filed in the action.” Rules of the Arizona Supreme Court, Rule 91(f).

2.7. Most local rules require the clerk of the court to maintain control of such exhibits at all times. It is probably a good trial practice to require that a copy

of the slides presented by the advocate be marked as an exhibit for identification for the same reasons. This can be done at the conclusion of the argument to protect trial preparation materials, see also RASC 91(f).

2.8. The Rules require the court to consider certain issues to the comprehensive pretrial conference. These issues include imposition of time limits, use of juror notebooks, and "...the effective management of documents and exhibits." Ariz. R. Civ. Proc., 16(b)(17). Computer presentation slides and special demonstrative exhibits fall within the broad description of documents or objects that should be marked for identification. The disclosure of a list of exhibits (demonstrative or otherwise) that each party intends to use at trial allows the trial judge to effectively manage documents and exhibits at trial and avoids bench conferences and bickering over fairness and relevance issues.

### 3. **Handling Documents in the E-courtroom: Preparation**

3.1. The display of documents requires no special preparation. It is possible to take any document, place it on the ELMO® display and obtain a satisfactory enlargement on all monitors. A full-page display of a standard printed page in 8-12 point text will not be large enough to allow easy reading from the courtroom monitors, so some enlargement will almost always be needed. Place the full document on the display platform, then use the zoom button to enlarge the display of the document. Use the automatic focus button to obtain the clearest display. When the zoom feature is used only a portion of the document is displayed. At full zoom, the maximum display area is approximately four inches by six inches (4"X6") of the original text area. To examine the entire document, it will therefore be necessary to move the document on the display platform to display the needed portion of the document at a readable enlargement level. Some pretrial practice will help establish the best enlargement level for each document, depending upon what is most relevant.

3.2. *Practice Note:* The display platform on the ELMO® device is in a landscape orientation. Most printed documents are in the portrait orientation. If a standard document is displayed, the document will have to be manually scrolled or moved under the display area to reveal all portions for review. On a full page of text, the bottom part of the page may not be displayed easily because the top of the document will have reached the top of the platform, especially if any degree of enlargement is used.

- 3.3. *Practice Note:* There are several possible solutions to allow maximum enlargement with a minimum amount of movement. Movement allows display, but it can be distracting to the jury. Consider whether the important portion of the display can be copied and made into a separate enlargement. A clause in a contract, for instance, could be copied, enlarged, and then placed on a single page. Diagrams can be reformatted to fit into the primary display area in the landscape mode. PowerPoint and the various trial presentation software packages also have several features that allow the display of the source document together with enlargements or “markups” of key text, including highlighting, boxes and other signaling devices.
- 3.4. *Practice Note:* The best display area is approximately four inches by six inches in the very center of a page, about the size of a postcard. Experiment with several variations to find one that best suits your purpose. A second possibility is to treat any document as though it had four display quadrants, upper right and left, and lower right and left. If this method can be used, the actual document movement can be reduced to three times. Another option is to re-copy the document in the landscape format so that the full width of the display area may be used.
- 3.5. *Practice Note:* Consider whether or not the original document can be scanned to create a digital copy or a specific display, so that it can be easily incorporated into a PowerPoint display. If a computer will not be used, the document may be modified to fit the display parameters of the ELMO® device. As previously noted, PowerPoint can be used for this purpose. The digital copy may also be modified or marked using trial presentation software. Such software includes the ability to display documents side-by-side.
- 3.6. *Practice Note:* For best results, prepare a blocking or display plan diagram for each document, for use during trial. This will serve as a good reference tool (a) to keep the trial display consistent and effective, (b) to plan efficient document movement , (c) to plan what document will be used by each witness, and (d) how annotation will best demonstrate the key portions of the testimony and the display.
- 3.7. *Practice Note:* For multiple page documents, a better record can be made if each page is assigned a separate identifying number or mark.
- 3.8. *Practice Note:* The annotation feature on the touch-screen monitors does not mark or permanently attach to the displayed document. A screen print may be obtained and marked as a demonstrative exhibit. With proper foundation, the screen print may be admitted into evidence.

- 3.9. *Practice Note:* An illustrative or demonstrative exhibit, such as a damage chart, can be used effectively with blank lines to be filled in during the presentation by hand or by using preprinted adhesive labels. The blank document can then be displayed and the numbers or text can be added by affixing the label. This method also allows a fully completed document to be marked as a demonstrative exhibit. There are many combinations of traditional and technology supported displays that can be used effectively.
- 3.10. *Practice Note:* In a case with a significant number of documents, or where the lawyer will be displaying documents without the assistance of the staff person, a bar code reader may be a helpful device to locate and display documents on the screen. A laptop computer is essential for this purpose.

#### **4. Handling Documents in the E-courtroom: Pretrial Management Issues**

- 4.1. Documents to be displayed should be as legible as possible. Poor copies look even worse when enlarged. Originals or first generation copies are preferred. As copies are generated during discovery or disclosure, it will be helpful to begin assembling legible exhibit copies.
- 4.2. Decide, in advance of trial, whether document will be annotated during the witness testimony. Decide what annotations and why they are needed. Remember that annotations are not attached to the display, i.e. if the document is moved, the annotations stay in the same place on the screen.
- 4.3. Mark a complete copy of all exhibits for the clerk, with a complete copy for all counsel. Documents can then be placed on the display without further paper handling or foundational work.
- 4.4. Handle as many pretrial evidence objections before trial as possible. Agree on foundational objections. Consider Request for Admissions for admissibility and foundation issues. At the pretrial conference, as early as possible, ask for a pretrial evidentiary ruling to remove as many objections as possible. This will permit the best presentation of evidence during the trial with the least number of disruptions.
- 4.5. Always remember to use the presentation tools to create the most effective presentation. Decide whether the document will be displayed with top or bottom lighting, and whether it will show better if made into a transparency. Consider how the record will be made. Make a document key or index that reminds you what element or fact the document is offered for, how it will be displayed, how the witness will use the document to illustrate the testimony, and what annotations will be used.

- 4.6. Try to arrange a pretrial visit to the courtroom to view all proposed exhibits to make sure that they display as intended. This can be done by contacting the judicial assistant for an available time. A late afternoon on a law and motion day may work well.
- 4.7. No special technique is needed to enlarge text or the view of the document or object, but the enlarged display will be of a smaller image area. It may be necessary to make copies with a different enlargement or orientation format. Check the display quality of the document on the jury monitors. The podium monitor is smaller and the display seems darker than what actually gets displayed on the courtroom monitors. Experiment with several different enlargement modes to find the best match of enlargement, readability and minimal document movement. The display output in the Exhibit One system is sent to a small amplifier located inside the jury rails. Despite this, there are times when the upper jury monitors on the far left may not display clearly because of a loss of signal strength. These jurors may be frustrated by not being able to see the display clearly. Be sure to check all juror display panels.
- 4.8. If tangible object will be used, decide whether it will require manipulation to illustrate the points being made. If so, rehearse with the witness to make sure all views can be displayed. Determine if a flat illustration will work as well. If it is more effective to have the witness come to the jury rail to explain the testimony (such as when a physician describes an injury or procedure using an anatomical model), plan for how the visual record can best be made. This will usually involve requesting the judge to lock the camera for the plaintiff's counsel table, because it include a partial display of the front of the jury rail. Another alternative is to have the witness come to the podium, place the object on the ELMO ®, and then stand at the podium, using a pointer (the light pen or a manual pointer) to illustrate the testimony.
- 4.9. *Practice Note:* Develop a library of illustrations and diagrams, on transparency or color copies, for use during other trials. Disclose all such illustrative diagrams during discovery. Assume that everything to be displayed at trial, for illustrative purposes or otherwise, must be disclosed. Plan on all such demonstrative exhibits being marked for identification.
- 4.10. *Practice Note:* If document alterations are made for display purposes, provide those to the opponent as soon as possible to avoid objections during trial. It is recommended that separate enlargements should either be marked as a separate exhibit, or as a sub-exhibit.

- 4.11. *Practice Note:* Prepare and rehearse. The display tools are passive and easy to use, but it is not reasonable to expect that one can appear in the courtroom without any advance preparation and be able to make a successful presentation. Remember that a witness is usually going to be talking about the document, so include the witness in the preparation time as well. Preparation time is never wasted time.

## 5. **Handling Documents in Trial: Admitted Exhibits**

- 5.1. Ask the court to enable the jury display if it is not already on. Make sure that the ELMO® device is on (power switch on the left rear of the base). Make sure that the ELMO® is selected from the control panel. Select the upper or lower lighting source. Press the zoom button to obtain the best magnification. Press the auto focus button to obtain the best resolution and clarity.
- 5.2. For the Record: Announce the identification of the document to be discussed (i.e. "Mr. Smith, I will show you what is marked as Plaintiff's exhibit X..."). Have the witness identify or lay any further foundation needed to explain the source or importance of the document.
- 5.3. Select the enlargement or zoom display that best illustrates the point to be made or explained by the witness. Remember that the full zoom makes everything readable, but it will only display a single 4-inch by 6-inch area.
- 5.4. Conduct the examination using the document in the same manner as if the witness had the physical document in hand.
- 5.5. If only one portion of the document, i.e. a specific provision of a contract, is in issue, consider making a separate enlargement document or retyping the provision so that the entire relevant section may be displayed at once within the full zoom area. The best point size for such displays is approximately 24-36 points. Use simple fonts like Ariel, Verdana, or Times New Roman.
- 5.6. For VCR display, load the tape; press the VCR display control button on the control panel, then press the play button on the VCR. For the record, announce and identify the exhibit number and the portion being played.

## 6. **Handling Documents in Trial: Exhibits Requiring Foundation for Admission**

- 6.1. Ask the court to disable the jury display and to enable the witness display. Make sure that the ELMO® is on and selected from the control box. Place the document on the display platform and position it properly so the witness may read it. Only the lawyer, witness, and the court will see the document at this time. Be aware of inadvertent displays to the jury from the monitors located at the witness chair, counsel tables or the gallery monitors.

- 6.2. Ask the necessary foundational questions for identification and admission into evidence. Move to admit the document. If granted, ask the court for permission to “publish” the document to the jury by turning the jury display on. Complete the examination with annotations if necessary.
- 6.3. *Practice Note:* Remember that the jury display is on unless the Court turns it off. A document may remain on the jury display even after the lawyer and witness have moved on to another topic, or when the opposing counsel has started the examination, opening statement or closing argument.

## **7. Handling Documents in Trial: Impeachment**

- 7.1. Ask the foundational questions to set up the impeachment. Place the impeachment document on the display and select the device. Ask the court if the jury display is on. If not on, ask the court to turn it on. The document will be displayed on all monitors. Zoom or enlarge until the relevant portion is readable. For the record, identify page and line number of the transcript for impeachment.
- 7.2. Ask the impeachment question. As soon as the impeachment point is made, remove the document or ask the judge to turn off the jury display so that the jury is not reading other portions of the document while it is displayed. If there is objectionable material on the page, consider redacting the document so that just the impeaching statements are displayed.
- 7.3. *Practice Note:* A condensed deposition copy, at 4 pages of testimony per transcript page, makes an excellent display for impeachment. Testimony on more than one page can be displayed without the need to refocus, by simply sliding the entire page to display the needed page of deposition testimony.
- 7.4. *Practice Note:* The jury will be reading the document while the witness answers the impeachment questions, so leaving the juror display on during the witness’ explanation is probably more effective. Any response other than an unqualified admission will seem evasive, because the actual text is displayed for the jury to compare.

## **8. Handling Documents in Trial: Demonstrative Exhibits**

- 8.1. Demonstrative exhibits may be displayed by placing the item on the ELMO®, and then selecting the proper display mode as with other documents. For the record, identify the demonstrative item being displayed.
- 8.2. Ask the witness to explain or annotate the display. Remember that the annotation does not become part of the video record without specific additional steps (see Sections 1.10.4, and 1.10.5). An audible description for the record may suffice for some purposes, since the exhibit will only be for

demonstrative purposes.

- 8.3. If the annotation is demonstrative only, i.e. to allow the jury to have a general understanding of the scene or the document, it may not be necessary to make a permanent record of the screen annotations.
- 8.4. *Practice Note:* If a record is to be made of the witness' annotation, there are several possible alternatives in addition to those previously described: (1) consider having the witness come down to the ELMO® at the podium, and make the annotations directly on the displayed demonstrative exhibit; (2) hand the transparency and the pen to the witness on the stand, allow the witness to make the colored marks on the transparency, and then hand the sheet back to you for placement on the display. Verify that the witness has properly marked the transparency and then display the document using the ELMO®; (3) prepare multiple transparency copies of the document so that witness annotations from more than one witness (such as eyewitnesses to an accident) may be displayed for comparison; (4) have the witness prepare the transparency with the annotations before taking the stand, then lay appropriate foundation that the witness prepared the diagram ahead of time to save time during trial. A permanent record will then be available of what the witness used to annotate the display. Each transparency should be marked as a separate exhibit or as a sub-exhibit to the main exhibit.
- 8.5. For tangible objects such as anatomy models, mark the model as a demonstrative exhibit. If the witness will need to move the item into various positions, consider if it would be more effective to (1) have the witness come the ELMO® and move the item personally or (2) ignore the ELMO® and go to the jury rail. Having the witness at the ELMO® is probably more effective when you want to display a close-up view of objects too small to be displayed in actual size, i.e. the internal workings of a mechanical device.

## 9. Use of PowerPoint® for Trial Presentation

- 9.1. PowerPoint® slide presentations may be presented by connecting the laptop computer to the computer cable on the counsel desktop or on the podium. Select the computer control button from the Exhibit One® control panel. The video display will be shown on all monitors.
- 9.2. If the slide is shown to reinforce or emphasize a particular point, remember to control the display to the jury by (a) having the judge turn it on when you want it on, or (b) selecting the computer display from the Exhibit One® control panel only when it is needed. The latter may be less disruptive to the flow of the presentation.



- 9.3. If there is no document on the ELMO® display panel, the screen is gray and can be effectively used as a transition or temporary display while the computer presentation is being readied by the assistant. When the computer display is ready, select the computer display control button, and the video output from the laptop computer should be displayed on the screen.
- 9.4. For opening statement or closing argument, remember that the jury's tendency may be to read the slide and ignore your verbal explanation. Make the slide simple enough to reinforce the main points while you fill in the details.
- 9.5. The PowerPoint® software program can be used to prepare full color slides that are then printed on paper and presented without a computer. Photo printing paper is recommended for crisp display. On the print option under the File menu in PowerPoint®, there are menu choices at the bottom which allow the user to print (a) a single, full page slide, (b) a "handout" page, that will print 2-6 slide miniatures per page, (4 slides per page is recommended because it is the easiest to move on the ELMO® device), (c) a "Notes" page, that will have one slide and lined notes below, or (d) the "outline" view which is the text only of the presentation.
- 9.6. *Practice Note:* Like other displays on the JAVS® system, there is no automatic record of the PowerPoint® display. As previously discussed, a copy of the PowerPoint presentation should probably be marked as a demonstrative exhibit and given to the clerk for purposes of the appellate record.
- 9.7. *Troubleshooting Note:* If the video from the computer is not displayed, first check to make sure that "computer" has been selected on the JAVS® control panel. If selected, then the computer's video display switch must be checked. On some models, such as Toshiba®, there is a special combination of keys (Fn + F5) that controls whether the video display will be shown on the laptop screen only, the output device only or on both simultaneously. Be sure to determine how to enable the video output on your laptop before the first day of trial.

## 10. **Making the Record**

- 10.1. RASC, Rule 91(f) requires a record to be made of the proceedings in trial. The Arizona Rules of Civil Appellate Procedure describes what is to be included in the appellate record. The record includes "...original papers, exhibits... and other objects filed with the clerk of the superior court, and a reporter's transcript or narrative or agreed statement." ARCAP, Rule 11(a); Rule 11(g).

- 10.2. Arizona Revised Statutes, § 12-221 requires each judge of the superior court to appoint a court reporter. The court reporter must be "certified" by the court. A.R.S. § 12-222. The court reporter "...shall attend court during the hearing of all matters before it, unless excused by the judge. He shall make stenographic notes of all proceedings before the court..." A.R.S. §12-223.
- 10.3. The Arizona Rules of Civil Appellate Procedure require the appellant to "...order from the reporter an original and one copy of a transcript". Rule 11(b).
- 10.4. If no transcript is available, the Appellate Rules allow the appellant to file a narrative statement of the evidence "...from the best available means, including his recollection." ARCAP, Rule 11 (c). In lieu of the transcript, the parties may stipulate to an "agreed statement, which sets forth such evidence or proceedings as are essential to a decision of the issues presented by the appeal." ARCAP, Rule 11(d).
- 10.5. Arizona Revised Statutes § 38-424 permits the use of tape recorders by the court "for any purpose...in lieu of reporters or stenographers," unless the matter is a court proceeding, "...and either party requests that a court reporter or stenographer be used."
- 10.6. The JAVS® system of fixed video cameras and strategically placed microphones is capable of making a record of the proceedings. The record made by the JAVS system will not be a court reporter's transcript, so the parties will have to stipulate that the JAVS® audio/video record will be the alternate "transcript" allowed by the Rules.
- 10.7. A party may request that a court reporter prepare an official narrative transcript of the proceedings if one is made. The court may not refuse the request under current Arizona law. See, Burnett v. Walter, 135 Ariz. 307, 309, 660 P.2d 1234 (App. 1982).
- 10.8. A standardized minute entry regarding the recording of hearings will be used by most Maricopa County Superior Court divisions, informing the litigants and counsel about the JAVS® system and the need to make a special request for a court reporter if one is requested, usually at least 48 hours prior to the proceeding to be recorded. The order may include a warning that "Failure to timely request a court reporter will be deemed consent to proceed without a court reporter."
- 10.9. There may not be a court reporter present in the E-courtrooms at every hearing, so it will be easy to forget that a record is being made. The system will usually be turned off by the court staff for breaks and off the record

discussions but counsel will have to be vigilant about when the system is on or off.

- 10.10. *Practice Note:* Effective October 1, 2001, The Maricopa County Superior Court entered Administrative Order 2001-076, covering all proceedings in electronic courtrooms. The Order provides that *"The official record of court proceedings in electronic courtrooms shall consist of a digitized video recording unless a party or the judge asks for a court reporter."* The Order applies to *"all court proceedings"* taking place in an electronic courtroom. When a court reporter is requested, the reporter's notes and transcript will be deemed the official court record. When a court reporter is not present, the digital recording shall be deemed the official court record. When an appeal is taken from a proceeding in an electronic courtroom, and the digital recording is required to be transcribed, a typed version of the digital recording will be prepared by either a transcription service that has been approved by the Maricopa County Superior Court, or by a Maricopa County staff court reporter.
- 10.11. ***Practice Note:*** It is strongly recommended that at the first break in the proceedings, you ask the clerk to review the audio and video recording from the index to make sure that both audio and video are being recorded. There is an on-screen audio level indicator, but that will not guarantee that all audio and video are being recorded.
- 10.12. *Practice Note:* Always make sure that the record accurately reflects what is being discussed or identified. The JAVS® system is only as good at recording as the lawyer is at identifying the item under discussion. Remember: the JAVS® system does not automatically record what is displayed on the monitors. It is therefore very important to have a copy of everything that will be displayed marked as an exhibit, in evidence or for demonstrative purposes.
- 10.13. If illustrative marking or annotation is important to the case, consider using a transparency rather than a document with on-screen annotations. Remember: there will be no video record of the annotation points or markings made by the witness with the on-screen illustration unless Camera 6 is selected and locked.
- 10.14. If the JAVS® record is the only record, find out from the court what method, if any, will be available for transcription of the record. Outside vendors, approved by the Court, or staff court reporters may be available to make a "transcript" for appellate purposes. This issue is currently under

review and lawyers should check with the court to determine how the transcript will be made if no court reporter is used.

- 10.15. *Practice Note:* At the pretrial management conference, ask about the court's specific procedures for making a record. The court will encourage the parties to stipulate that the JAVS® record shall be the agreed upon record of the proceedings. Be sure to check on the quality of the record being made during the proceedings, particularly after the first day of trial.

## 11. **General Practice Suggestions**

- 11.1. When the document is displayed on the monitors, the jury's tendency will almost always be to examine the document, rather than listening to the witness. Display the document only when you actually want the jury to be reading it while it is being displayed. Allow the jury sufficient time to review the document before asking any substantive questions. It may be appropriate to ask the witness identification or foundational questions, but if it is important enough to display, it is important enough for the jury to have time to review it.
- 11.2. The witness will also have a tendency to look at the monitor when shown a document. This will break eye contact with the jury as the witness talks to the monitor and not to the jury. When the witness uses the annotation tool or describes the exhibit, both the jury and witness can be looking at the monitor. If a summary or concluding point is to be made by the witness, consider asking the judge to turn off the jury display, and then ask the witness to direct the answer directly to the jury.
- 11.3. Do not overuse the annotation tools. The annotation effect should be used to illustrate, not to decorate the display. Too much annotation is worse than none at all.
- 11.4. If annotation is to be used, it is suggested that the lawyer select only one color and stay with it throughout the trial. If additional colors will be used by different witnesses, remember to find a way to make the annotations a part of the permanent record.
- 11.5. Be aware that the witness' description of the annotation will appear on the audio record as the usual "here and here", so be sure to make a good record. If there are multiple points to be made with a single exhibit, do not allow all of the annotations to remain on the screen. Instead, it is recommended that the witness or lawyer make one point with annotation, then erase and start over with a new description.
- 11.6. Be judicious in the use of presentation material, particularly PowerPoint,

during opening statement and closing argument. Display tools are very effective at communicating facts. The advocate, however, must never allow the screen to tell the story. If information is displayed on the screen the jurors lose the opportunity to connect with the advocate, and likewise the opportunities for persuasion are significantly reduced. Presentation displays can be effectively used for reviewing, emphasizing, or comparing factual matters. Do not allow the use of presentation devices to distract from your ability to persuade.

## 12. **Closing Comments**

- 12.1. Presentation tools can be effectively used to improve the quality of courtroom presentations. Juries are used to receiving information from the monitor. Juries are not generally resistant to technology, especially when it is an accepted part of the courtroom architecture.
- 12.2. Prepare for success by working on presentation well before trial. There are "production" techniques that involve actually viewing the displays and taking advantage of the strengths and limitations of the system.
- 12.3. Keep it simple. The presentation style should never overwhelm the content. Be selective in the use of techniques. If the full display is not actually required, do not use the ELMO® just because it is there.
- 12.4. Do not read the display material if the jury has it on their monitors. Allow the jury time to read it. Remember that any publication to the jury involves some time delay. Make the best use of the display to punctuate and emphasize, not to be the sole means of communication. Dull documents are capable of boring the jury just like boring witnesses.
- 12.5. The court will allow you opportunities to practice. Take advantage of those opportunities as soon as it is certain that trial will take place. Call the judicial assistant to make an appointment to come to the courtroom to practice.
- 12.6. It is not a good idea to wait until the "big" case comes in to use these tools and techniques. By practicing on the "small" case, you can be assured that you will be fully prepared to take full advantage of these tools when the need arises.
- 12.7. There are many outside resources available to learn how to make effective presentations. The following bibliography may be helpful. Comments, suggestions, corrections, additions and anecdotes about e-courtroom presentations are always welcome. Please see the contact and biographical information at the end of these materials.

## **Trial Practice Bibliography**

1. **PowerPoint for Litigators**, (How to Create Effective Illustrative Aids and Demonstrative Exhibits for Trial, Mediation, Arbitration, and Appeal), authored by Deanne Seimer, Frank D. Rothschild, Edward R. Stein, Samuel H. Solomon, published by National Institute for Trial Advocacy, ISBN 1-55681-674-X.
2. **Effective Use of Courtroom Technology**, (A Judge's Guide to Pretrial and Trial), authored by the Federal Judicial Center, published by the National Institute for Trial Advocacy, ISBN 155681-718-5.
3. **McElhaney's Trial Notebook**, 3rd edition, by James W. McElhaney; published by the Section of Litigation, American Bar Association. ISBN 0-89707-903-5
4. **Trial Techniques**, 4th edition, by Thomas A Mauet; published by Little, Brown & Co., ISBN 0-316-55122-8.
5. **Theater Tips and Strategies for Jury Trials**, 2nd edition, by David Ball; published by the National Institute for Trial Advocacy, ISBN 155681-531-X.
6. **Winning Courtroom Strategies**, by Edward T. Wright; published by Prentice-Hall, ISBN 0-13-125170-8
7. **What Makes Juries Listened Today**, by Sonya Hamlin, published by Glasser LegalWorks, ISBN 1-888075-65-1
8. **The Ethical Trial Lawyer**, by Gary L. Stuart; published by the State Bar of Arizona, ISBN 0-88726-028-4
9. **Dog and Pony Shows**, (How to Make Winning Presentations When the Stakes Are High), By John Quick, published by McGraw-Hill, ISBN 0-07-051077-6
10. **Presentations**, (Proven Techniques for Creating Presentations That Get Results), by Daria Price Bowman, published by Adams Media Corporation, ISBN 1-55850-798-1
11. **The 11 Most Frequently Asked Questions about Courtroom Presentations and Performance**, by Leonard Matheo and Lisa DeCaro, published by the Trial Techniques Committee, of the Tort and Insurance Practice Section, of the American Bar Association, first published in the Committee Newsletter, summer 2000, pp 1 through 11.
12. **Persuasion in the Courtroom**, by Joseph V. Guastafarro, published by the Professional Education Group, Inc., copyright 1991.
13. **"Brainstorming Your Way to a Winning Case Strategy", " Better Visuals Via Brainstorming", " Creating a Great Cast of Characters", "Getting Case Analysis off to a Fast Start"**, published by DecisionQuest, available for download at [HTTP://www.casesoft.com](http://www.casesoft.com).
14. **Persuasive Computer Presentations**, by Ann E. Brenden and John D. Goodhue, published by American Bar Association. ISBN # 1-57073-952-8.

## Don Stevens



Don Stevens is a trial consultant in private practice in Phoenix, Arizona. He has over twenty-five years of civil trial experience, in state and federal courts throughout Arizona, involving vehicle accidents, governmental liability, including civil rights and highway design, construction defects, medical malpractice and commercial litigation. He is certified by the State Bar of Arizona as a specialist in personal injury and wrongful death. He is AV rated by Martindale-Hubbell. Don is also a judge pro tem for the Maricopa County Superior Court.

Don has been primarily responsible for training attorneys on the features of the new e-courtrooms going into operation in the Superior Courts of Maricopa County. He has been a featured presenter on trial practice techniques at continuing legal education seminars sponsored by the State Bar of Arizona and other organizations. He has produced two online training segments for the State Bar of Arizona. He has been the Chairman of the Trial Practice Section of the State Bar of Arizona. He has been on the teaching faculty for the Arizona Trial College.

Don has extensive experience in trial presentation techniques, including the newest presentation software, and classic programs like PowerPoint. He currently offers trial consulting services, personalized continuing legal education and training for individuals and firms in all areas of trial practice, from case management to closing argument.

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## **NOTES**