

The Center For Legal and Court Technology and The Courtroom 21 Project

Technology Augmented Trial Advocacy Certification Course

Direct and Cross-Examination Exercises

Goals

As every trial lawyer knows, there is no substitute for just standing up and “doing it.” That is especially true when it comes to courtroom technology. In order to understand both the utility of evidence presentation technology and the ways in which it alters one’s traditional way of doing things, practical experience is essential. Our direct and cross exercise should assist you in:

Learning how to use basic evidence presentation technology emphasizing document cameras, displays, and notebook computers;

Evaluating the utility of high-end display program basic features such as barcode evidence retrieval;

Determining what adjustments, if any, are necessary in your presentation style when using technology;

Determining whether minor modifications to the technology, such as remote controls, might be useful given your presentation style;

Evaluating whether you would prefer third-party technology operation or will be comfortable operating your own technology;

Potentially determining how comfortable you may be in the event of unanticipated technology complications;

Better understanding of how witnesses and jurors react to the use of evidence presentation technology and when and how to object to technologically presented evidence;

Deciding whether and when to use or not to use evidence presentation technology.

Requirements

Each counsel will conduct a brief direct or cross-examination, as assigned. In doing so, counsel should use the supplied exhibits that counsel believes to be appropriate. Counsel should present at least one exhibit using the document camera, preferably emphasizing a key portion of the exhibit, and at least one computer exhibit, again using the call-out feature.

Methodology

We will conduct this exercise using the personal injury case of either *Matthews v. Morton* or the criminal case of *State v. Jackson* that follows later in these materials. The CLCT faculty member will act as judge. Section members not acting as counsel will serve as witnesses or jurors.

As assigned, counsel will conduct a direct or cross-examination of the witnesses in each case. In doing so, please use the evidence that has been supplied to you. That evidence is available in three forms: the physical documents, copies of which follow later in these materials, the Training CD, which includes the basic exhibits for those of you who have brought and prefer to use your own computers and your own software, or the CLCT-supplied notebook computers with barcode readers and previously loaded Trial Director software.

Each pair of counsel will conduct brief directs, crosses, and, if appropriate, redirects. Ordinarily, the judge will remain in “character” unless counsel has a significant case-related or technical problem. Time permitting, judge and section members may wish to discuss key aspects of any given direct and cross. Please keep in mind that one of our goals is to use the exercise to discuss some of the pros and cons of technology usage.

For purposes of these exercises, please assume that we are under the Federal Rules of Evidence, all exhibits have been previously marked and admitted (you may assign your own markings to the exhibits), and that we are in a jury trial. In real cases please keep in mind that the judges of the District Court differ in their approaches as to who should actually display evidence. Some prefer or permit counsel; some prefer or require that the clerk do so, and some may prefer or require that they do so personally.

Long experience has shown us (sometimes painfully) that even in trial practice exercises trial lawyers fight to win. *Please* remember that this is not our goal. Instead, we have limited time, and our primary goals are to assist you in your ability to use technology and to determine how useful it may be for you.

The Center For Legal and Court Technology and The Courtroom 21 Project

Technology Augmented Trial Advocacy Certification Course

Opening Statement and Closing Argument Exercises

Goals

Our goals in this exercise largely are the same as those set forth in the Direct and Cross-examination exercise, including learning how to use basic evidence presentation technology emphasizing document cameras and notebook computers. As you are aware, however, from your own substantial experience, openings and closings are quite different than witness examinations. In a jury trial you will be speaking directly to those whom you would persuade. Questions you should consider here include:

To what extent are visual aids, including PowerPoint text slides, useful in either openings or closings?

How much is “too much” in either openings or closings?

To what extent are opposing counsel’s electronic visuals potentially objectionable?

Given the District Court’s courtroom designs, if permitted where would you prefer to make your opening or closing from and how would that effect your technology use?

Requirements

Each counsel will conduct a brief opening or closing as assigned. In doing so, counsel should use the supplied exhibits that counsel believes to be appropriate in whatever form counsel prefers. Counsel may but need not use one of the supplied PowerPoint openings or closings.

Please note: We may not have enough time for each section member to make an opening or closing. We will make every effort to include each section member but our primary goal in this exercise is to familiarize you with technology-enhanced openings and closings. Each participant will make either an opening or closing during the assigned trial.

Methodology

We will conduct this exercise using the personal injury case of *Matthews v. Morton* or the criminal case of *State v. Jackson* that follows later in these materials. The CLCT faculty member will act as judge. Section members not acting as counsel will serve as jurors.

To the degree that time is available, counsel will conduct an opening or closing as assigned. In doing so, please use the exhibits that have been supplied to you. That evidence is available in three forms: the physical documents, copies of which follow later in these materials, the CLCT Training CD that includes the basic exhibits for those of you who have brought and prefer to use

your own computers and your own software, or the Courtroom 21-supplied notebook computers with barcode readers and previously loaded Trial Director software.

For purposes of these exercises, please assume that we are under the Federal Rules of Evidence, all exhibits have been previously marked and admitted (you may assign your own markings to the exhibits), and that we are in a jury trial.

Long experience has shown us (sometimes painfully) that even in trial practice exercises trial lawyers fight to win. *Please* remember that this is not our goal. Instead, we have limited time, and our primary goals are to assist you in your ability to use technology and to determine how useful it may be for you.

The Center For Legal and Court Technology and The Courtroom 21 Project

Technology Augmented Trial Advocacy Certification Course

Trial Instructions

Goal

The primary goal of the trial is to ensure that you have the opportunity to try a complete technology-enhanced case. The case is simple, and the time is short. However, the experience of doing a complete case has been invaluable in our experience. Trying the case should assist you in deciding how comfortable you are with basic evidence presentation technology and should help you to determine whether you wish to later expand your technological options.

The cases

Counsel will try *Matthews v. Morton* or *State v. Jackson* in its entirety. We will not proceed to verdict in the case, although the judge may wish to take a straw poll at the end of the trial. The cases can result in a verdict for either side.

Methodology

Each case will be tried as assigned by two pair of counsel. One lawyer in each team should do the opening and either the direct or cross of a witness. The other should do the closing and the remaining direct or cross. Counsel who conducts the direct of a witness is responsible for making any objections during cross.

In each trial the CLCT faculty member will act as judge. Section members not acting as counsel will serve as witnesses or jurors.

In *Matthews v. Morton*, counsel may call only their own client. In *State v. Jackson* counsel may call only the witness designated. There are fact sheets for each witness.

Ideally, each trial will take about one hour with critique and discussion to follow. Although the judge in particular may address traditional trial practice issues, all participants should feel free to raise issues related to technology use or non-use.

Exhibits are available in three forms: the physical documents, copies of which follow later in these materials, the CLCT Training CD, which includes the basic exhibits for those of you who have brought and prefer to use your own computers and your own software, or the Courtroom 21-supplied notebook computers with barcode readers and previously loaded Trial Director software. We have also supplied PowerPoint openings and closings for counsel who do not prefer to prepare their own.

Trial is “free form.” You may try the case as you see fit. Please remember, however, that our goal is to provide you with additional technology-based tools. A decision *not* to use technology is as important as the decision to use it.

You can expect the trial judge to ensure that we finish the case on time even if that means limiting openings, examinations, or closings.

The Center For Legal and Court Technology and The Courtroom 21 Project

Technology Augmented Trial Advocacy Certification Course

Evaluation Form

Overall Evaluation:

1. How helpful did you find this program? (Please circle the appropriate response)

Not Very Helpful *Moderately Helpful* *Very Helpful*
1 2 3 4 5

2. Did this program help to improve your comfort level of using technology in the courtroom?
(Please circle the appropriate response)

No, not at all *Moderately* *Yes, A Lot*
1 2 3 4 5

3. How well did this program meet your expectations? (Please circle the appropriate response)

Not very Well *Moderately Well* *Very Well*
1 2 3 4 5

4. Compared to other CLE's you have attended in the past two years, how does this CLE rate?

Not Very Good *Middle of the Pack* *Superior*
1 2 3 4 5

The course components:

5. How useful did you find the hands-on technology familiarization session? (Please circle the appropriate response)

Not Very Useful *Moderately Useful* *Very Useful*
1 2 3 4 5

6. How useful did you find the direct and cross-examination exercise? (Please circle the appropriate response)

Not Very Useful *Moderately Useful* *Very Useful*
1 2 3 4 5

7. How useful did you find the opening and closing exercise? (Please circle the appropriate response)

Not Very Useful *Moderately Useful* *Very Useful*
1 2 3 4 5

