

CREATIVE MOTION PRESENTATION
USING VISUAL AIDS TO
GET THE COURT'S ATTENTION

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Unlike their federal counter-parts, state court judges must decide motions with little or no support; they do not have law clerks who help analyze motions before the hearing and draft orders after the hearing. In many cases, state court judges appear to come to the bench with little or no idea what the motions are that you are presenting or any real understanding of the facts or law governing the issues you are presenting. As a result, defense counsel often find themselves arguing motions to a court that knows little about the issue presented, and that is not inclined to do anything that the State opposes. The issue, then, is whether there are ways to grab the court's attention and get the court to take the motions seriously.

Motions are always based upon some combination of legal analysis and factual analysis; a motion asks the court to apply what you believe the legal principles are to what you believe the facts to be. Asking the court to learn both the law and the facts from an oral presentation, even with a well-written motion or memoranda in support of the motion, is asking for a lot

from a trial court faced with deciding motions day in and day out. When presenting motions that are not run of the mill motions, then, you should consider a more creative method of presenting the argument. One way of accomplishing the goals of grabbing the court's attention and educating the court about the crucial aspects of the case is to come up with a visual presentation that highlights the key aspects of the motion.

Anyone with PowerPoint on their computer and a scanner can quickly prepare a presentation that can grab the judge's attention and highlight the crucial aspects of the motion. In addition, using PowerPoint, or similar software, can force you to focus in on the strengths and weaknesses of your motion, ensure that you have your legal authority ready and your exhibits in a position to present. In short, a PowerPoint presentation not only can grab the attention of the court and focus the court on the key points, but will also force you to prepare and serve as an outline for your presentation.

When to use PowerPoint?¹

Not every motion deserves a PowerPoint presentation and not every aspect of a motion that does deserve a PowerPoint presentation should be included in the presentation; highlighting everything in a brief highlights

¹ PowerPoint, of course, is not the only way to present information visually. There are other software programs, and using blow-ups from Kinko's can serve the same purpose. I will discuss using PowerPoint only because it is the most common method of visual presentation.

nothing. So the first question is whether the motion is (a) worth a visual presentation and (b) will benefit from a visual presentation. A motion made to preserve an issue on which the law is currently against you is not worth a visual presentation, nor are motions that are boilerplate motions based upon the discovery statute, or a general claim under *Brady* or some other well understood legal principle. Visual presentations gain some of their power from the fact that they signal to the judge that you think the motion has some real merit and that you want it taken seriously. When the motion does not live up to the advance billing, you have simply cast doubt upon your own judgment.

Even an important motion may not benefit from a visual presentation when the motion is based primarily upon oral testimony and well known legal principles. For example, a motion to suppress that rests on the premise that the police did not have sufficient basis for a *Terry* stop of your client's automobile, where the facts underlying the stop are developed during the hearing through oral testimony, may not warrant a visual presentation simply because PowerPoint and other visual tools generally do not lend themselves to an on-the-fly presentation of oral testimony. Obviously, if you are working in a court with real time reporting and can pull out crucial testimony that has been given, and have the time and ability to do a quick

PowerPoint in court, a short presentation can be fashioned from even oral testimony.

Motions that you want to be taken seriously and which involve either complicated facts that are reflected in exhibits or complicated legal principles are motions that may benefit from a PowerPoint presentation.

What Does PowerPoint Do?

PowerPoint allows you to present a factual and legal argument through a series of visual slides; the slides are ordered in a way that advances your argument and that give the viewer the key points – factual and legal – that you are trying to make. The slides can contain information that you have typed into the slide, such as quotes, or they can include visual computer files, such as jpg images. A PowerPoint presentation is useful when there are key phrases in exhibits, key aspects of photographs that you want to highlight, and key quotes in cases or statutes that you want to drive home. For example, imagine a suppression motion that has as its factual basis statements made by the police in reports and the contents of the affidavit used to obtain the search warrant – such as a case in which police reports show that the police were aware of facts that were not disclosed in the affidavit and which, if disclosed, would have undone the showing of

probable cause. PowerPoint can be used to place the key exhibits in order, present the exhibits in a manner that highlights the key phrases, and then present the pertinent quotes from controlling legal principles. Similarly, photographs can be put into a PowerPoint presentation and then highlighted so that the important information is driven home. For example, in a motion to suppress that claims that items the seizure of which was not authorized under the warrant, photographs of the scene or of the items that were seized may be useful in highlighting the degree to which the restrictions of the warrant were ignored.

Warning: PowerPoint presentations are created before an argument – sometimes shortly before – and are difficult to adjust on the fly. So, an active judge with questions may find a PowerPoint presentation frustrating or may totally throw off your presentation because questions take you out of the order of your presentation. If your presentation has various components, such as a section on the facts leading to the issuance of the search warrant, and another section on the scope of the search, and another section on the law governing these issues, it may be best to create three presentations, so that you can easily skip to a given topic in the event the court has questions about that topic. Second warning: the presentation itself is most likely not evidence – so you will need to make sure you have introduced the relevant

exhibits. If you want the presentation itself into evidence – for example, when a comparison of photographs is included and is necessary to explain the motion – then make sure you create a disc that contains the presentation and offer it as an exhibit.

Creating PowerPoint Motions

As with almost anything involving computers, the best way to learn how to use PowerPoint is to sit down and play with the program, preferably with someone who knows the basics sitting next to you. Reading a book, or even watching someone else do it, will not do the trick. This paper is not a technical paper on PowerPoint, so I will not go through the mechanics of creating a presentation. Rather, I will discuss planning the presentation of a motion through PowerPoint.

First: Identify the points you wish to make: identify key facts and key legal principles.

Second: Determine how those points can be made visually. A smoking gun quote in a document may be best presented through a visual of the document and then highlighting the quote, while a series of facts drawn from a document may need a series of slides that create a list of the facts.

Third; Make sure that you have the exhibits and cases you want to use in a format that can be used in PowerPoint. Not all files can be imported into PowerPoint, for example. PDF files cannot be imported into PowerPoint, at least they could not the last time I tried. Scanners can be purchased reasonably cheaply and can be used to scan exhibits and can scan in published opinions if you think that the West version of the opinion will look better when used in a PowerPoint. Think about visual exhibits that can make a point. For example, in a search in which the police seize large numbers of items that you believe are outside the scope of the warrant, take a digital camera with you when you view the evidence and take pictures showing the amount of evidence that was seized. In a Daubert motion challenging the admissibility of expert opinion, scan in prior transcripts, scientific articles or other exhibits you will use to establish the unreliability of the opinion. In a motion to preclude identification based upon suggestive pre-trial procedures, scan in the photographs that were used in the pre-trial procedure.

Fourth: Determine the order in which you want the points made. A rambling PowerPoint presentation is probably at least as hard to follow as a rambling oral presentation.

Fifth: Determine how best to highlight the points you want to make – quotes can be pulled from exhibits; or they can be circled or highlighted. Photographs can be put in position to be compared. Cases opinions can be treated as any other exhibit, with quotes being highlighted. Some points, however, cannot effectively be made by highlighting, and you will need to create slides of other points and quotes.

Sixth: Give yourself time to run through the presentation and see how long it takes – there is such a thing as too long a presentation. If you have co-counsel, have them review the presentation.

Seventh: Make sure that you have the equipment for the presentation, and a back up means of making the presentation should technology fail. Printing out key slides to have with you is always a good idea, and may be worth giving to the court even as you do the presentation.

Making a persuasive presentation takes time and thought. If you invest the time and think through what you are doing, you will find that the quality of your own analysis of the motion is improved, and that you will have a presentation that will effectively highlight the important points of the motion.

Attached are some slides printed from presentations in a motion to suppress and a motion in limine under Rule 404.