

Litigation in the Software Age

presented by

GEOMATRIX
—PRODUCTIONS INC—

Multimedia technology has precipitated a revolution in the way evidence is conveyed to the courtroom. Video, high definition imagery, and diagrammatic graphics allow us to paint a clearer picture of a legal conflict than ever before, for both juries and judges.



Litigation in the Software Age

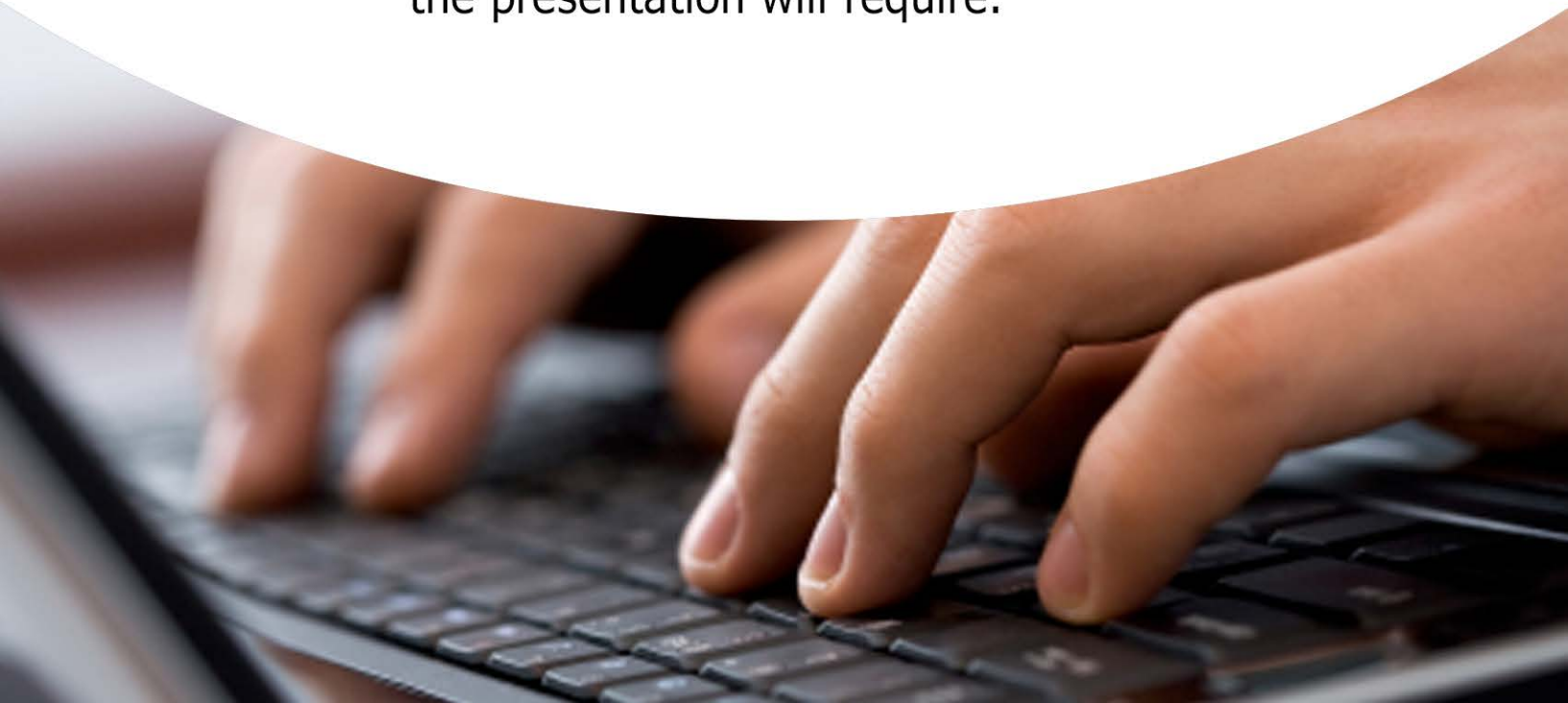
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Preparing for Your E-trial

Running a successful electronic trial is a challenge that your predecessors did not have to face. But with proper coordination between litigator and technician, success is assured.

Establishing contact early is essential. Schedule an hour-long planning session with your trial tech; this way, you will be able to share media files, digitize hardcopy, and plan for the creation of any timelines, diagrams, or highlighted documents that the presentation will require.



Getting started is relatively simple, but as you begin to plan your trial, there are a few potential sticking points to be aware of:

When dealing with digital images and documents, always try to secure a copy of the original file. Scanning printed or copied documents can result in a significant degradation of quality. Although a degraded image might look fine at normal magnification, it will become pixelated or blurred if it is enlarged. This can become an issue at trial, when specific details of an image need to be scrutinized closely.



Digitize any exhibits you plan to display in court, and provide them to the technician. This will make it easy to display, highlight, and magnify the files at any time during the trial. Be sure that they are scanned at a resolution of 300 dpi or higher, to avoid the potential magnification issues discussed above.

If possible, get your exhibits marked for trial before providing them to the technician. If the digital file names are consistent with hardcopy labels, the trial tech will be able to respond quickly if it becomes necessary to deviate from the planned sequence of slides and videos. Bates stamps are a good alternative if pre-marking is not possible.

If your evidence includes video depositions, it is best to pursue a judge's ruling on any potentially objectionable testimony in advance of the trial, to give the technician time to implement edits. If it is not possible to get an early ruling, be sure to request synchronization of the video and transcript well in advance of the playback date in order to minimize delays during in-court editing.



After you have provided the necessary materials and planned your digital presentation, it's time to resume your usual pre-trial routine. Remember, the purpose of employing a trial tech is to take the task of running the visual side of the presentation off your plate, so that you are free to focus on the content of your argument. In addition, even if you manage to maintain your concentration, amateurish posters and technical delays can detract from the jury's comprehension of your case. To minimize uncertainty and keep your head clear during arguments, it is highly advisable to delegate the operation of all multimedia technology to a dedicated professional.

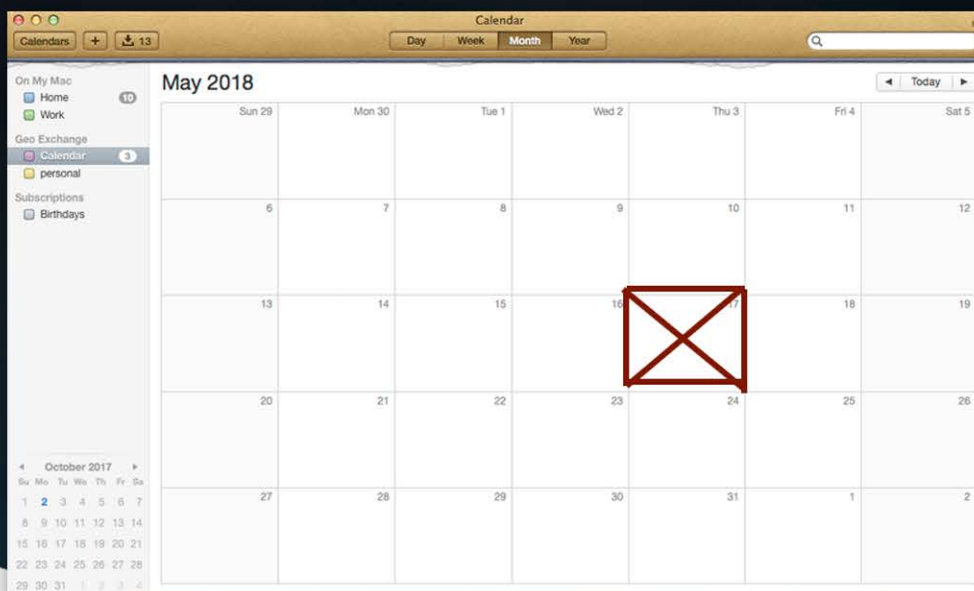
Video Depositions

Pre-recorded testimony is often the centerpiece of an electronic trial. Unlike a written transcript, video testimony captures the facial expressions and body language of the witness. Jurors will make good use of these nonverbal cues as they work to determine whether a witness is trustworthy. And since the average jurors consume the bulk of their media diet in video format, they are likely to have a great deal more experience parsing footage than text. Rather than challenging them to flex new mental muscles, allow them to expend maximum energy analyzing the substance of the material they observe.



Video depositions also allow medical experts and other professionals to appear at trial without the risk of last-minute cancellation. The presence of a camera helps to discourage misconduct, and keeps unruly witnesses and litigators on their best behavior. And unlike in-court testimony, pre-recorded depositions are an entirely known quantity—this makes it easier for you to plan your moves in advance.

Professional videographers are experts in capturing electronic testimony. These media specialists use multiple microphones to balance audio properly even when the witness is whispering and the examiner is shouting. In addition, they generally record a redundant backup on-site to ensure that a corrupted disk will never invalidate your efforts.



It is easy to schedule a video deposition; simply contact a local legal video production firm to have a videographer assigned to your case. It is best to schedule at least a week in advance to ensure that there are videographers available. Although it may be possible to schedule a recording on short notice, caseloads are in constant flux, and there are a limited number of professionals working in the field. Keep in mind court reporters are typically more abundant than videographers, because their services are required by law during every deposition. The earlier you are able to secure the availability of your videographer, the lower the chance that the deposition will need to be postponed.

When you are reserving a room for the proceedings, be sure that the space is open and available one hour prior to the scheduled start time. Video and audio recording equipment is complex, and takes time to set up. Most experienced videographers are in the habit of arriving one hour early to ensure that there are no delays, so be sure that staff are on-site to guide them to the staging area and open any locked doors. If you're not sure which room to choose, consult the following list of room selection criteria:



Video Deposition Room Selection Criteria Required:

1. At least one available power outlet
2. At least five chairs (for the witness, the court reporter, the videographer, and any additional counsel that will be present in addition to the direct and cross examiners)

Recommended:

3. Adequate table space for evidence, case binders, and attorneys' laptops
4. Bright lighting
5. Blinds covering any exterior windows
6. At least one opaque wall (in case of glass walls, request a backdrop)
7. AVOID rooms with skylights

Recording is still possible even when the recommended criteria cannot be met. Most videographers are accustomed to working in cramped doctors' offices and waiting rooms. However, to ensure that recordings conform to the standard of quality that is expected in a court of law, it is best to meet all criteria listed above.

Video Depositions (continued)

Videographers are trained to notify all parties that a recording session has been initiated or terminated by announcing "[On/Off] the record at [Time of day]." Please wait for this announcement before commencing your examination, and refrain from making any confidential remarks until after the videographer has confirmed that the equipment is offline.

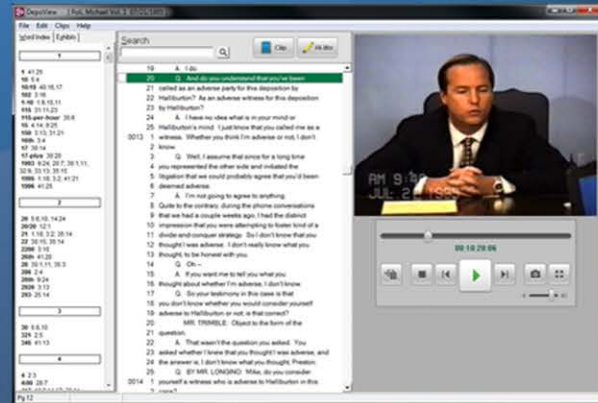
THE WRONG WAY



CORRECT




At the conclusion of the deposition, you and the opposing counsel will be able to order copies of the media in various file formats. Use the following guide to determine which format you will require.



Formats

1. DVD (standard format; can be played by any computer with a disk drive, or by a television set and DVD player.)
2. Synch (The video file is synchronized with a searchable text transcript, allowing navigation of video content via text. Computer required for playback—be sure to specify whether your computer has a disk drive, or USB ports only.)
3. USB Drive (This format is required for playback on some newer notebooks and laptops that lack CD/DVD drives. Additional files can be added to the USB drive at any time, and the total storage capacity is much greater than a single disk. Be sure to consult with your technician about what file format you will require.)

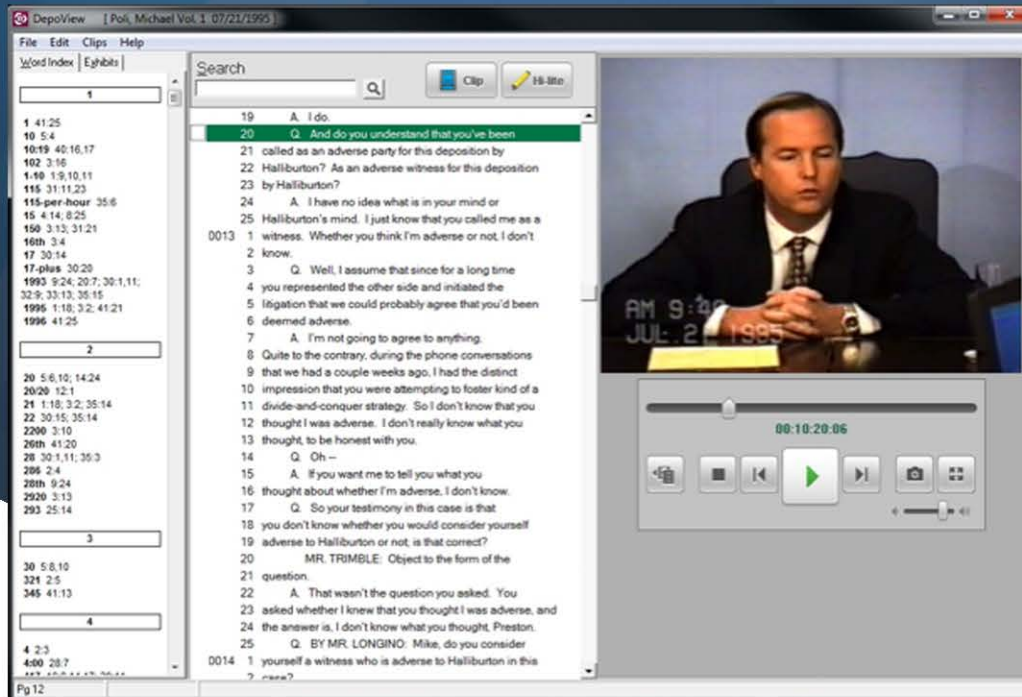


If

you plan to attempt playback without the assistance of a technician, it is important that you understand the various limitations of different file and media formats. It is essential that you communicate your needs clearly; video professionals can only supply the proper format if you communicate your requirements clearly. If you will be working with a technician, be sure to utilize their expertise on this issue. If you are dealing with recordings generated by a third-party, be sure to provide these materials to the technician as early as possible, so that any formatting issues can be resolved.

Videographers typically publish media to their clients within one week of the deposition. However, most are accustomed to working under time constraints, and will typically be able to accommodate emergent situations. Consult your videographer about expediting policies.

Synchronizing the Video Record with the Written Transcript



Just as DVD has become ubiquitous as a format for electronic evidence, technology has left it behind. DVDs still work fine for simple playback, but if significant review or redaction will be necessary, transcript synchronization is essential. Synchronization indexes the video by page and line number, enables text-based searching and navigation, and can embed an auto-scrolling text transcript alongside the video playback window. Essentially, synchs make searching the video as easy as parsing the transcript.

Essentially, synchronization gives attorneys and editors the ability to jump instantly to any relevant segment of the video record simply by typing a phrase from the transcript into a search bar. This tool is powerful for three reasons:

Why Synch?

1. It makes pre-trial review of video documents much more efficient. While preparing arguments, an attorney can jump to each mention of relevant subject matter with no more than a few keystrokes. The most persuasive clips can then be imported into PowerPoint and inserted into a closing presentation, or replayed for a witness to elicit or impeach testimony. Remember, these clips convey more information than a simple transcript. For instance, if a witness with wandering eyes takes a suspiciously long pause before answering a question, only audio-visual documentation can accurately convey this to the jury.
2. In addition, transcript synching reduces turnaround time in the event that a deposition must be edited before it can be presented to the jury, even when the legal pipeline is especially congested. Busy video editors are more likely to take on a new project if it is synched, even a times when their inboxes are overflowing.
3. Finally, synchronized depositions can be instrumental in witness impeachment. When discovery depositions are synched, they can be used to underscore a witness's evasiveness or outright self-contradiction in court. As directed by the attorney, the technician can punctuate the witness's statements with video clips that highlight discrepancies. Traditionally, lawyers could only read back transcript excerpts, or ask witnesses to read them. Now, witnesses confront their own reflections in a virtual mirror, the inconsistencies in their accounts placed side-by-side for jurors to see.

Video Depositions at Trial: Editing for Objections

Whenever a deposition transcript is redacted according to a judge's ruling, it is necessary to edit the video recording in order to eliminate the inadmissible testimony before playback at trial. If it is possible to provide your video professional with a redacted transcript in advance of the scheduled playback date, then editing can be completed with a full suite of tools and software at the editor's disposal. This is the best option, as it will produce the most polished product: cuts will fall cleanly between words, audio interference will be mitigated, and overall picture quality will be optimized.

If there are last-minute redactions that must be made to a transcript immediately before playback, it is still possible to implement changes to the video. This process can be executed with relatively little delay if the transcript is synched, but when working from a DVD, the judge and jury will have to wait in silence while the technician skips over the redactions. Because DVDs are not indexed, changes must be handled manually—by switching output from the projector and speakers to the technician's monitor and headphones. This means that edits must be done in real time: If two minutes of the transcript must be removed, then the judge and jury will have wait two minutes for playback to resume.

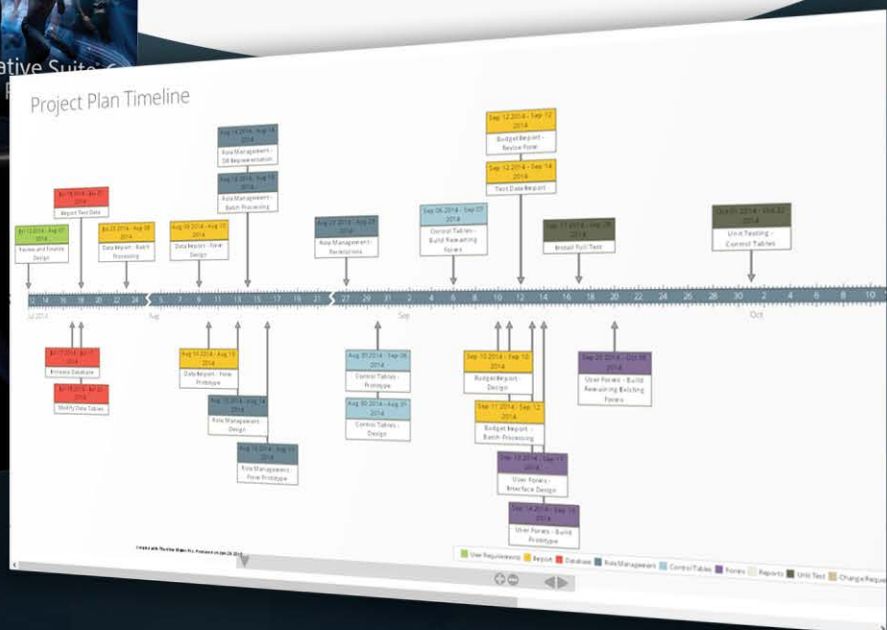
Elmos and Physical Evidence

With the help of an ELMO document camera, printed documents can be transformed into electronic evidence in real time. Rather than passing around a binder, photographs, or even objects, counsel can project and magnify them for all to observe simultaneously on a large-format screen. This capability can prove invaluable during impeachment of an evasive witness who has contradicted previously documented statements, or other forms of documentary evidence. It also eliminates the unnecessary delay that can occur when one member of the jury examines a piece of physical evidence for longer than expected.



Closing Arguments & PowerPoint Presentations

Although most litigators are proficient in Microsoft PowerPoint, trained technicians are capable of utilizing the software to its full potential. Using Adobe Creative Suite and other professional graphics software, they can generate custom diagrams to help illustrate a timeline of events, complex relationships between individuals, or the circumstances of an accident. After creating an outline of your closing argument, have a discussion with your technician about the ways a professionally produced presentation might help articulate your ideas more clearly.



Equipment Considerations

The equipment you will need depends on the evidence formats you will present. Here are some questions you should be prepared to answer before contacting your local videoprofessional:

1. Do you have any video files?
 - A. Are they DVD format, or will they only run on a Computer?
 - B. Do they have an audio component?
Is the dialogue clearly audible?
 - C. Are any of your files depositions?
If so, are they synchronized?
If not, are digital transcripts available?
(.PDF files will not work)
 - D. Will further editing be necessary?



2. Do you have any audio files? Are they on a compact disk, or stored on a Computer? Do these files have a lot of background noise?
3. Do you have any digitized documents or images that you would like to display on the projector? Can you get access to the originals if your files are compressed?
4. Are you planning to develop a digital presentation for your closing arguments?
5. Will you require an ELMO document camera to display items on screen that have not been digitized?



Equipment Guide

1. Projector and Screen: creates a large cinematic image that can be seen clearly from across the courtroom. Large and small sizes are available for different venues.
 - a. Pros: Display video and documents on a single large screen. A laser pointer can be used to direct all viewers' attention to a single point.
 - b. Cons: This is a single display setup: in some courtrooms, two separate displays might be required to accommodate both the judge and the jury. In courtrooms with many windows or skylights, the projection may appear dim.



2. LCD Displays: When a courtroom is too cramped to accommodate a projector, one or more LCDs may be used to ensure that the judge, jury, and opposing counsel can all observe electronic presentations simultaneously.
 - a. Pros: Highest picture quality. Bright enough for sunlit rooms. Can accommodate courtrooms that are too cramped for projectors. Multiple units can be used when judge and jury are oriented in a way that requires more than one screen.
 - b. Cons: More expensive than a projector. More complex.

Equipment Guide (continued)

3. ELMO: A real-time document camera that, in conjunction with a projector, can enlarge objects, images, and paper documents, and display them to the courtroom.
 - a. Pros: ELMO can be used without a technician present. No digitization necessary. Capable of projecting enlarged images of physical objects, the best way to exhibit physical evidence.
 - b. Cons: Less versatile than Computer-enabled presentation (jury can see you flipping through the pages by hand). Cannot play video.



4. DVD Playback: Facilitates playback of DVDs, but cannot handle other file formats.
 - a. Pros: Simple and reliable.
 - b. Cons: Will NOT play compressed video files, such as .mp4 and .mov.



Equipment Guide (continued)

5. Computer Playback: Can play video of virtually any format, manage presentations

A. Pros: Can play all video formats, run PowerPoint presentations, and Trial Director software.

B. Cons: Book early to ensure availability.

6. Sound: Some surveillance videos are silent. Playback of all other video evidence will require amplification to be heard clearly across the courtroom.

7. Remote Slide Advancer: Control the advancement of PowerPoint slides without leaving the podium.

8. Laser Pointer: Direct the jury's attention to key features of the evidence. Not recommended when multiple displays are in use.

Courtroom Playback: Securing Permissions

A week before your scheduled playback date, please contact your local video professional to confirm availability, and to discuss and any special requirements. As soon as these arrangements are made, do not delay in filing form JD-CL-90 – REQUEST TO BRING ITEMS INTO THE COURTHOUSE (A.K.A. – “Request to bring audio/visual equipment into the courthouse). If you are having trouble finding a copy of the form, or are unsure of whether you have accessed the current version, simply request a copy from your technician.

REQUEST TO BRING ITEMS INTO THE COURTHOUSE <small>JD-CU-90 Rev. 4-13 9 B. Sec. 1-10</small>		COURT USE ONLY AVREQ
<div style="display: flex; justify-content: space-between;"> <div style="width: 30%;"> Instructions to the Party Making the Request <small>Print or type all information requested and file with the Clerk's Office. If granted, present signed request to the Marshal at the courthouse entrance on the date(s) of the hearing or trial.</small> </div> <div style="width: 30%;"> Instructions to the Clerk <small>After the request is reviewed by the judge or magistrate, ensure that the original is coded, if applicable, and placed in the court file. Provide a copy to the party making the request and, if granted, a copy to the Chief Judicial Marshal or his or her designee.</small> </div> <div style="width: 30%;"> ADA Notice <small>The Judicial Branch of the State of Connecticut complies with the Americans with Disabilities Act (ADA). If you need a reasonable accommodation in accordance with the ADA, contact a court clerk or an ADA contact person listed at www.jud.ct.gov/ADA.</small> </div> </div>		
Case Information		
Name of Case (First named plaintiff v. First named defendant)	Docket Number	
Address of Court (No., Street and Town)		
Name of Judge or Magistrate Presiding Over Trial or Hearing	Date(s) of Trial or Hearing	
Request I am the: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Attorney For Plaintiff/State <input type="checkbox"/> Attorney For Defendant <input type="checkbox"/> Other (specify) _____		
I request permission to bring the following item(s) into the courthouse for the hearing or trial indicated above: <input type="checkbox"/> Audio/visual equipment (Specify): _____ <input type="checkbox"/> Large and/or unusual exhibits (Specify): _____ <input type="checkbox"/> Other (Specify): _____		
I need to bring the item(s) for this hearing/trial for the following reasons: 		
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;">Signed (Party making request)</div> <div style="width: 55%;">Name of Attorney or Self-Represented Party (Print)</div> </div>		
<div style="display: flex; justify-content: space-between;"> <div style="width: 55%;">Address of Party Making Request</div> <div style="width: 45%;">Telephone Number (With area code)</div> </div>		
Firm Name (If Applicable)		
<div style="display: flex; justify-content: space-between;"> <div style="width: 55%;">Jurat Number of Attorney or Law Firm (If Applicable)</div> <div style="width: 45%;">Date of Request</div> </div>		
Certification <small>I certify that a copy of this document was mailed or delivered electronically or non-electronically on (date) _____ to all attorneys and self-represented parties of record and that written consent for electronic delivery was received from all attorneys and self-represented parties receiving electronic delivery. <small>Name and address of each party and attorney that copy was mailed or delivered to:</small></small>		
<small>*If necessary, attach additional sheet or sheets with name and address which the copy was mailed or delivered to:</small>		
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;">Signed (Signature of filer)</div> <div style="width: 55%;">Print or type name of person signing</div> </div>		
<div style="display: flex; justify-content: space-between;"> <div style="width: 55%;">Mailing address (Number, street, town, state and zip code)</div> <div style="width: 45%;">Telephone number</div> </div>		
Order <small>The request to bring the item(s) listed above into the courthouse above having been considered, it is hereby ordered:</small>		
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;">Name of Judge/Magistrate (Print)</div> <div style="width: 55%;">Signature</div> </div>		
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;">Date of Order</div> </div>		
<div style="display: flex; justify-content: space-around;"> Print Form Reset Form </div>		

Courtroom Playback: Securing Permissions

If you do not secure the necessary permission at least one day in advance of the playback date, the technician will be barred from entry, and the proceedings will be delayed. Be aware it is your responsibility to forward a copy of the granted order to your technician, who will be expected to produce printed and signed authorization at the courthouse security desk.

It is best to schedule your video for playback during the morning session. As you are aware, delays are a routine part of trial work, and juries respond best to materials that are not punctuated by a twelve-hour intermission. Efficient scheduling can be a big cost-saver as well. In the event of an afternoon playback, be sure that the courtroom is left unlocked during the lunch recess so that your technician will have an opportunity to set up the equipment without delaying the proceedings.

Often, courtroom layouts present challenges for video professionals. Some rooms are too cramped or have too many windows to accommodate digital projection equipment. Other configurations require multiple screens to ensure that all parties are able to observe the evidence. Before renting presentation equipment from an experienced provider, be sure to review the equipment chart at the conclusion of this document to learn about the range of capabilities available to the modern litigator. Your technician may also be able to provide addition insight about the potential physical limitations of a given courthouse or courtroom.

