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The Benefits of Flash in the Courtroom

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Two Years Later, a Progress Report

In the September 2005 edition of *LJN's Legal Tech Newsletter*, my colleagues and I published an article touting the benefits of Flash. We described using Flash to design a single platform from which our client displayed all of its trial graphics/exhibits and eventually won over $400 million.

Still a bit intoxicated from victory, we boldly predicted a bright and expanding future for Flash. While we conceded back then that Flash use was "still in its infancy," we were sure it would rapidly "become a highly accepted and expected courtroom technology" that sophisticated lawyers would increasingly use to "organize their cases, display trial graphics, create effective 2-D animations, educate judges, and persuade jurors."

Two years have passed — enough time to look back, refine our observations, assess Flash's benefits, examine the accuracy of our predictions, and offer some real-world observations for those contemplating using Flash in the courtroom.

A Recap of Flash Technology

For those not yet fully familiar with Flash, the program allows the user to (among other things): 1) create 2-D animations; and 2) create a single integrated platform from which to display a variety of different interactive and interconnected "Web site-like" teaching devices.

Most people new to Flash understand the concept of 2-D animations, and readily appreciate how such tools make presentations more persuasive. Where some confusion remains for would-be Flash users is in understanding what is meant by "a single integrated platform from which to display a variety of different interactive and interconnected 'Web site-like' teaching devices." To explain this, I ask new Flash users to go through a three-step thought process.

Step One. I suggest they think about the basic outlining techniques we learned in school and why this way of organizing information might not be so effective in the fast-changing environment of the courtroom.

In the simplest sense, basic outlines look like this:

[IMGCAP(1)]

Such outlines are *hierarchical* and *unidirectional*. They are *hierarchical* in that there are major topics (represented by Roman numerals), which are divided into subtopics (represented by capital letters), which can be further divided into sections (represented by Arabic numbers) and sub-sections (represented by lower-case letters).

These traditional outlines are *unidirectional* in that all movement proceeds in one direction — vertically (*e.g.*, from I.A. to I.B. to I.B.1.). Potential problems arise at trial because this unidirectional design forces the user to move linearly through your presentation. While proceeding linearly works well in a relatively controlled environment (*e.g.*, in drafting a high school term paper or during a well-prepared uninterrupted speech), this structure is often a disadvantage in the courtroom where you need to adapt quickly and

move seamlessly from one topic to another — often in a *non-linear* manner. Think about the last time you used PowerPoint, which only displays material linearly (*e.g.*, slide 1, slide 2, slide 3, etc.), and think about the hassle of having to adjust on the fly to a change during your presentation (*e.g.*, the judge wanted you to skip to another topic or go back and explain something earlier in the presentation in greater detail).

Step Two. Think about a favorite Web site. More specifically, think about how you are able to navigate around that site. The Web site typically has a home page which serves as the platform from which the user begins to access information.

Distributed throughout the home page are various “links” or “portals,” each associated with a main topic. By clicking on the link, the user retrieves a menu from which he or she accesses and navigates through sub-topics. Consistent with this, I ask people new to Flash to imagine outlining the structure of their favorite Web site. The layout looks something like this:

[IMGCAP(2)]

While such an outline is hierarchical, it is *not* unidirectional. Movement within this structure is not linear. In fact, a well-designed Web site allows the user to navigate in three different directions — what I call horizontally (*e.g.*, from I. to II. to III.), vertically (*e.g.*, from III.A. to III.B. or from I.B.1. to I.B.2.) and diagonally (*e.g.*, from I.B.2. to III.).

The resulting permutations are staggering. For example, the user could provide an overview by merely moving horizontally from I. to II. to III. Alternatively, the user could move vertically by starting with III. and analyzing this topic in detail by then examining III.A. and III.B. Or, the user could move diagonally from III.B. to I. and examine that topic in greater detail moving vertically from I. to I.B.3.

Step Three. Concentrate on what makes a Web site interesting and helps the visitor retain information. Most people comment on the different kinds of visual information available on a Web site — such as text, scans of printed documents, photographs, videos and animations.

Creating a Platform

What does this three-step exercise have to do with my assertion that Flash allows you to create “a single integrated platform from which to display a variety of different interactive and interconnected ‘Web site-like’ teaching devices”? It relates in at least four ways.

First, Flash is the tool that allows the user to set up the framework for the multi-dimensional outline illustrated above. Second, Flash allows the user to navigate from topic to topic in virtually any order. You can start anywhere on the outline and very easily move to other areas, usually with only a couple clicks of the mouse. You build a latticework that is hierarchical and non-linear. Third, once a topic is selected, it can be examined in whatever depth desired. If you want just an overview, stick with the Roman Numerals (*e.g.*, move horizontally from I. to II. to III.); if you want to examine a topic in depth, move vertically from I. to I.B.3. Finally, Flash allows designers to import and display virtually every type of graphic information from this framework. For example, Flash allows you to use embedded files, such as JPEGs, TIFFs, PDFs and MPEGs. As a result, a lawyer can display scans of raw documents, custom graphics, photographs, videotaped depositions; virtually any type of file can be exported into Flash and thereby be accessible to the lawyer at trial.

Recent Examples of Using Flash in the Courtroom

When we talk about how Flash is being used, we need to distinguish between using the program to create 2-D animations (short movies, which play from beginning to end, controlled by a scrolling time bar) and using it to create a self-contained, stand-alone, navigable package.

2-D Animations

The use of Flash to create 2-D animations for the courtroom is exploding. This explosion is not confined to any particular kind of litigation. Some Flash animations last for only a few seconds; others are much more elaborate and can run for minutes. These animations are being used throughout the trial — most commonly in the opening statement, during expert testimony and at closing.

Animation is a powerful tool, especially in cases where it is important to illustrate a process, passage of time, movement from one place to another, etc. In the past, many lawyers believed animations to be an unaffordable luxury and would not consider incorporating this feature into their graphics. Currently, lawyers are increasingly using less expensive Flash to make these points. Let me offer three examples.

Animated Graphs that show data points moving along the X axis and Y axis. For example, a graph that shows how a stock price varied over time or how damages increased the longer the defendant restricted the plaintiff from entering the marketplace. Rather than being stuck with using a fixed data line, the graphic is animated to show the data changing over a corresponding period of time. This can be particularly dramatic when there are sudden changes attributable to events alleged in the litigation — for example, the precipitous drop in stock price just after an inside trader sold all of his stock in advance of bad news.

Animated Patent Figures that take a line drawing from a published patent and show how the various parts of the figure correspond to written portions of the claims. This could be a very simple animation that juxtaposes the official figure next to the official claims language. The animation zooms in on a particular portion of the figure and highlights that portion with a distinct color, while simultaneously highlighting the corresponding section of the text with that same color. The user could stop and start the animation whenever appropriate to discuss any portion in greater detail.

How Things Work Animations that show how various parts of a particular machine or process are supposed to work (and by extension how things may have gone wrong). For example, we recently created a very effective animation showing how a jet engine worked. The graphic started off with a still shot of the engine. Labels then appeared identifying the key components. The engine appeared to come to life, with turbines spinning, air being forced out the back, and so on. At the appropriate point, the lawyer could start the next segment of the animation, which showed what went wrong when the engine overheated.

It is not difficult to imagine a simple 2-D animation being used in virtually every type of case. We are not encouraging the gratuitous use of Flash. We instead make this observation as evidence to support our conclusion that this use of Flash will continue to rapidly expand.

Interactive and Interconnected
'Web Site-Like' Teaching Devices

Lawyers and expert witnesses continue to expand their use of Flash to create self-contained, stand-alone, navigable modules that gather and display everything necessary for trial or crucial evidentiary hearings. This use of Flash is not as widespread as the use of 2-D Flash animations. Some examples include:

- **An Annotated Timeline** where each of the dates on the timeline is a "link" or "portal" from which the lawyer can pull up a menu and display all of the evidence relevant to that day. So, for example, the lawyer could click on Jan. 4 and then with a second click pull up each of the documents that were written that day, or a segment of videotaped deposition testimony concerning a crucial meeting that occurred then, or a simple 2-D animation showing what happened to the stock price at hourly intervals after that meeting; and

- **An Annotated Map** where different locations serve as the portals that take the user into a more detailed map of the area, a timeline showing who had lived at that location and for how long, corresponding graphics showing how much pollutant was at that location at any given time, and a general tutorial that an expert could use to teach the biological effects of particular chemicals.

Flash is becoming very common in patent litigation, where judges often require parties to submit extensive material as part of a tutorial designed to educate the judge and clerks about the disputed technology, or as part of a *Markman* hearing. Some judges encourage parties to leave copies of the Flash material behind to refer to as they decide the case. We expect this trend to continue and expand.

Conclusion

The use of Flash in the courtroom shows no sign of slowing. At this point, its only limitation is the lawyer's knowledge of the program and its potential uses. As this knowledge increases, so will the creative uses of Flash.

G. Christopher Ritter is a member of The Focal Point LLC. He is the author of "Creating Winning Trial Strategies and Graphics," published by the American Bar Association. He thanks all of his colleagues at The Focal Point for their insights on Flash. For examples of some the Flash work described in this article, go to http://www.thefocalpoint.com/ and click on Portfolio.