

## Slide 1

Practical tips for presenting forensic evidence to your tribunal (Judge / Jury)

My part of this presentation is an opportunity to give practical tips, and to raise things to think of when tackling digital forensic evidence and the new frontier.

## Slide 2

**Firstly**, please do not be daunted by the scale of material that cyber evidence can create. When you are talking about a “flight recorder of life” and the fact that most of our lives are documented in some digital format, the scale and variety of raw data you can get is overwhelming even with one suspect, and then in our case we have three men to consider, and we need to see how that individual data interlinks.

My **second** tip is to meet with your experts and analysts early. The sooner you get comfortable with the technological labels, and the types of material being produced in your case the better. Do not fear that you may have to do this on every case. We know that the types of material, and the types of devices that are being created in the digital world are forever rapidly changing, hence it is a “new frontier”. From one case to the next your material and techniques will change.

Please remind the experts / analysts that the trial tribunal will likely be new to the evidence they are presenting. **Don't be afraid** to be honest and explain so are you. Remind them at all times the end result and explanations need to be kept simple. If you have a jury in your jurisdiction, then you may have a member on it that has never used a computer or mobile phone. This is getting less likely but it happens. Also far more frightening is having some who are computer and forensic experts who know far more than you do about the points you are trying to make. This is why in order to keep the faith and trust of all your tribunal you need to be knowledgeable and in control of your presentation and understand all of the data and concepts.

Decide early with your experts and analysts **how** you are going to present the end results. How do you want to lead your tribunal to the conclusion of guilt?

### Slide 3

Story boards are really useful. They are a pictorial chronology that use a time line, but you can interpose CCTV footage, extracts from web searches, extracts of text data, or anything you want. Do you want to present all your different data sources separately? For example all phone texts in one part of the evidence, all phone calls in another, all web searches in another, all still photos from CCTV in another and take the tribunal from one area of the evidence to the next, or would it work in your case to have all the material that is relevant mixed in to key time and date points. For example in our case, you could have defined points such as the first being the actions of the first man arriving and sourcing the phone cards and car, then the second to the two men arriving and how they organized that.

If using story boards do you want it all as a visual presentation on a compilation disk to play throughout on screens? Do you want to print that presentation and have it available to the tribunal in a binder?

Do you want to utilize diagrams such as spider diagrams for phone attribution?

Do you want a consistent color or theme for each suspect throughout all exhibits so it is easy to identify who is who from a first glance?

Do you want to include raw data as well as the analysts creations in your evidence?

Once that is decided you need to consider what to include as your **exhibits for trial**.

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Here is the tricky part. What do you need? **How** do you know what may become relevant? Are you giving the tribunal too much; are you giving them enough? What is to be given to the other side?

Question what do you need to hold back and seek to assert public interest immunity over, to **protect methods of getting information**? You may not want to

put in the public forum new techniques of getting material or highlighting and tipping criminals off as to what information we can and can't get.

If you recreate anything with an analyst in a pictorial manner or pick and subtract some information in their exhibits it is always a good idea to show the tribunal **the raw data** in an example to show how it originally appears so that they can understand the process undertaken.

I usually include in my presentation to the tribunal the **crucial timings** of evidence i.e. an hour around the shooting, 30 mins before and 30 mins after. I would include everything in that time if it wasn't too large as the tribunal usually wants to know everything they can over that time and don't like to feel like they have had anything left out and not brought to their attention. You can include this as the raw data if not relevant to your story board but I would usually take a tribunal to it at some stage to show them everything and explain what the Prosecution say is irrelevant / relevant.

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But then what about the **unused material**, the things you don't use, what do you give to the other side?

My rule of thumb in relation to anything the **Defendant has created** i.e. phone usage so a report of a phone download, a mirror copy of a hard drive, a Facebook conversation, I will unless good public interest reasons not to, disclose it all to the defence or allow for inspection. Reason being is it is very hard in these cases to know exactly what may assist or undermine throughout the trial process. A conversation that seemed irrelevant or innocent to you on first reading of the case may become relevant. Rather than printing reams of paper, consider offering the item for inspection. It saves time and money for us Prosecutors.

Another thorny issue often becomes cross disclosure of defendants personal information. Again you have to be aware of collateral damage. What if suspect number one who arrived in Jamaica first was secretly having an affair with the wife or partner of suspect number 2? Evidence of that affair is all over his phone but he doesn't contact her at key times for our trial. If you hand over all of

suspect number 1's phone to suspect number 2 as disclosure, is that right? It may help your case if they fall out and start blaming each other but should you hand it over in the first place. Be very alive to issues of necessity. Is it necessary I hand over this personal information? Do I need to hand it over to comply with my disclosure obligations?

## **Slide 6**

Essentially once you have found out how the experts have created the data, and how you want it to go to the tribunal create your exhibits and bundle as early as possible. Know it inside and out.

Courtroom presentation.

Think about how many monitors you need in a courtroom for all to see. What are the acoustics like in your court room, do you need head phones, do you need speakers? If you have a tribunal member who has visual or hearing problems how can you address that. Don't forget whatever you give the tribunal, give the defendants too.

Don't be afraid to ask your court center if you can get in the court in advance of your trial to see how things will play and work. The day of trial is always too late and you don't want to discover hiccups along the way. Test your equipment and run through your opening speech using the court room.

If you are using monitors and footage always note the exact parts you play and if possible have them put on a compilation disk as the trial advances so at the end you can give the tribunal everything they have seen and nothing else (so edited) so they have it for deliberation. It is embarrassing when the tribunal ask to be reminded of something and you have to reconvene the court and then try and work out exactly what you played to them, as they need it for their deliberations. Keep a note of timings of devices and footage at all times.

Whichever systems you use always have copies of presentations for the tribunal to make notes on. Provide highlighters, post its, have everything paginated, use dividers, contents lists and anything else you can think of to make it an easy to

use bundle and the key to your case. The better your binder looks, and the easier it is to follow the more likely a tribunal will be convinced of your portrayal of the evidence. If you stumble around the material or produce irrelevant or confusing documents then the case is lost before you can make your best points.

### **Slide 7**

As always my best tip is go and see someone present some digital evidence from time to time. See how they do it. Does it work? Walk into a case blind and see if you can follow it? Ask Judges what they think works and what doesn't?