

**April
2018
Volume 66
Number 3**

United States
Department of Justice
Executive Office for
United States Attorneys
Washington, DC 20530

James A. Crowell IV
Acting Director

Contributors' opinions and statements
should not be considered an
endorsement by EOUSA for any
policy, program, or service.

The United States Attorneys' Bulletin
is published pursuant to
28 C.F.R. § 0.22(b).

The United States Attorneys' Bulletin
is published by the
Executive Office for United States
Attorneys
Office of Legal Education
1620 Pendleton Street
Columbia, South Carolina 29201

Editor in Chief
K. Tate Chambers

Lead Editor
Nikki Piquette

Assistant Editors
Becky Catoe-Aikey
Brenda S. Mercer

Law Clerks
Gurbani Saini
Brandy Sanderlin

Internet Address
<https://www.justice.gov/usao/resources/united-states-attorneys-bulletins>

Send article submission to
Editor,
United States Attorneys' Bulletin
National Advocacy Center
Office of Legal Education
1620 Pendleton Street
Columbia, SC 29201

Cite as:
66 U.S. Attorneys' Bulletin,
April 2018

Delivering Effective and Engaging Training

In This Issue

Introduction	3
By Cameron G. Chandler, Associate Director, Office of Legal Education	
Training's Role	5
By Kelly A. Zusman and Bonnie S. Greenberg	
Designing Training to Improve Employee Performance	9
By Angela M. Dooley	
Tips for Effective and Engaging Presentations	13
By Mary Beth Pfister	
Developing Effective Materials and Slides	17
By Angela M. Dooley	
Lessons Learned: Confessions of a Training Officer	21
By Rachel Cramer	
Practical Tips for Effective Panels	27
By Kelly Shackelford	
How to Build a Smoking Gun	35
By Stephen Chahn Lee	
Lessons for Trials from Cognitive Research	49
By Stephen Chahn Lee	
Keys to Successful Webinars	53
By Mary Beth Pfister	
Testing Students to Improve Learning: A Practical Academic Perspective	57
By Corey Boswell	
Effective Training: The Students' Perspective	59
By Stani Day	
International Training: Challenges and Rewards	63
By Beth Sreenan	
Note from the Editor in Chief	69
By K. Tate Chambers	

Page Intentionally Left Blank

Introduction

Cameron G. Chandler
Associate Director
Office of Legal Education

It is with great pleasure that I introduce the National Advocacy Center's 20th Anniversary special edition of the *USA Bulletin*. It is the mission of the Office of Legal Education (OLE) to promote justice by training, educating, and developing Department of Justice personnel, and we are proud to celebrate twenty years of impactful training here at the National Advocacy Center (NAC), a premier federal training facility located in Columbia, South Carolina on the University of South Carolina campus.

Each year OLE trains over 20,000 DOJ personnel in advocacy skills, substantive law, and the management of legal operations through a combination of residential courses and distance learning. In addition to training, OLE's Publications Unit maintains and updates USABook online and publishes six editions of the United States Attorneys' Bulletin each year, as well as practical skills manuals or "blue books." Through our residential courses, Justice Television Network programs, webinars, and publications, OLE provides DOJ attorneys and legal support personnel with a wide variety of resources for professional development, all of which are made possible by the support of our DOJ colleagues who volunteer their time to share their expertise as instructors and contributing authors.

This issue of the *USA Bulletin* focuses on the importance of training, as well as the various educational strategies employed by instructors at the NAC. Articles such as *Designing Training to Improve Employee Performance* and *Tips for Effective and Engaging Presentations* illustrate the effort our instructors put into creating and delivering their presentations, while articles such as *International Training: Challenges and Rewards* provide insight into the important training conducted abroad by one of our valued training partners, the Overseas Prosecutorial Development Assistance and Training (OPDAT) office.

OLE strives to deliver creative, effective, and engaging training that enhances job performance. Our residential courses, distance education programs, and publications span a wide array of practice areas, topics, and new technologies, and I encourage you to take advantage of these learning opportunities. I hope this special edition issue of the *USA Bulletin* inspires you to think differently about training and motivates you to share your expertise with others. Finally, I would like to thank my predecessor, Mike Bailie, for making the NAC a reality, as well as all of those who have contributed to our training mission as instructors and authors. The NAC would not be celebrating this milestone without your dedicated support!

Page Intentionally Left Blank

Training's Role from the Student Perspective

As a student, training holds the promise of both enlightenment and improvement. Last spring, I took on a complex national security appeal. As part of an effort to get myself up to speed on the law, I attended a conference organized by the National Security Division. My goal in attending was to gain a better sense of how the Foreign Intelligence Surveillance Act and its 2008 Amendments worked in cases other than my own. The speakers were largely Assistant United States Attorneys (AUSAs) and Main Justice lawyers who were experts in the field; their insights and presentations covered the topics I needed, and I came away with a much greater understanding of national security law. I paid close attention in large part because the information mattered to my work. Additionally, the stories were illustrative in a way that a textbook is not.

Most of us attend training programs for at least three reasons: (1) we want to master a new subject matter; (2) we want to gain or improve a particular skill, like writing or oral advocacy; or (3) we want to avoid making mistakes. For appellate lawyers, the latter rationale matters a great deal because bad trial facts tend to make terrible precedential appellate law.

The National Advocacy Center (NAC) student experience has evolved significantly over the past ten years to better meet these goals. Gone are the days when students sat in rows listening to lectures with PowerPoints scrolling in the background. It was a good way of putting information out there, but it did little to engage the listener or facilitate learning. Also, unless you happened to be working on a case right *then* that involved the precise subject matter, retaining the information for long was unlikely.



So as a student today, we have to work. We have to read materials, participate in discussions, make presentations, or in some manner do what we're learning to do.

Actually performing the skill that we came to the NAC to learn gives us a concrete view about how the process works. Ideally, the experience gives us greater confidence to perform those same skills back in our home district. Training also provides a safe environment to try out a skill and to receive constructive feedback without fear of damaging a real case.

Students also play an enormous part in improving an instructor's work. Creating presentations forces teachers to think about how we do what we do, and sometimes that process leads to unexpected improvements. To teach legal writing, for example, I discovered a number of weaknesses in my own writing. Teaching also prompted me to streamline the way that I edit written work because it prompted me to create a checklist of the types of writing weaknesses that I ordinarily target.

Questions from students invariably send me back to the drawing board because they identify omissions in my materials or they raise something I've simply never thought of before. As a consequence, teaching becomes a dynamic experience that furthers my education along with that of the students.

In addition to improving my own work, teaching is a joyful experience. First, when you see the lightbulbs appear over the student heads in your audience, you know you've given them something useful. Second, when you see a student at the beginning of a week who is hesitant and nervous and by the end of the week, she's grabbing the microphone or beaming because she wrote a fantastic fact statement—it's awesome. Virtually every single card or note a student has ever sent to me is saved in a special drawer in my office that I open when I need a boost to get through a particularly difficult day. Without them, I might be a Starbucks barista by now.

When I first joined the Department of Justice (DOJ), I had spent the prior fourteen years working for the federal courts where the training options for anyone other than the judges were non-existent. To me, the NAC has always been an amazing resource. The courses are well run and informative, and the materials are useful and tailored precisely to the work that we do. More critically, I have met some of the brightest and best people on the planet, many of whom I consider my dearest friends. However, overall, what I really appreciate and admire is the fact that the Department of Justice has recognized the benefit of a well-trained workforce. Implicitly, it

recognizes that the work that we do is important enough to invest the time and resources into producing what I believe are the nation’s very best trial and appellate lawyers, managers, administrative officers, paralegals, and legal assistants.

Kelly A. Zusman is the Appellate Chief for the United States Attorney’s Office in Oregon. She has worked as a Civil AUSA, a Criminal AUSA prosecuting violent crimes, and she previously served as her office’s Senior Litigation Counsel. Zusman teaches legal research and writing, appellate advocacy, trial advocacy, evidence, and criminal discovery for the National Advocacy Center.

Training’s Role from the Instructor Perspective

You have just been asked to be an instructor at the NAC. By saying yes, you have decided to take on a project requiring large quantities of your nonexistent spare time. This also means that you are writing a brief or finalizing a search warrant at night while at the NAC. On top of that, your office is not happy because you are not physically present in your office. Is the banana pudding worth all of this? In short, yes.

As a decades-long NAC instructor, I have embraced the program, and I keep coming back. Why?

First, DOJ employees deserve to have the best instruction possible because we represent the greatest client: the United States of America. Our lawyers must possess skill, intelligence, and sound judgment. I was a new prosecutor once—twenty-four years old and fresh out of law school. I had the credentials but lacked experience. The NAC’s founding principle is that “experience teaches.” With the NAC’s peer-to-peer training model, my learning “curve” was a straight line up! When I took the Basic Criminal Trial Advocacy course, I was awful. Other talented AUSAs and DOJ attorneys taught me, in two weeks, how to try a federal case. After that, I took

every NAC course that was relevant to my job. Every course taught me something new and different and helped me become a better prosecutor.

Years later when asked to help teach the Trial Advocacy course, I did not feel competent to do so. Although I considered myself a good prosecutor, I did not consider myself an expert by any stretch. However, I wanted to teach because others had helped me. The reality for most NAC instructors is that we simply jump in and start swimming; we ask other instructors for advice, and we endeavor to help students in the same way that we were supported early on in our own careers.

Today, the NAC instruction has seen significant improvement with the introduction of the Faculty Development Institute. The NAC recognized that lawyers who are good at their jobs may not know how to teach others their skills; the faculty development courses now teach experienced DOJ employees how to teach. Both old and new instructors have taken this incredibly wonderful course, and I highly recommend it. Unsurprisingly, good teaching skills also translate into good trial and appellate litigation skills. It’s a win-win for NAC instructors.

If you haven’t taught yet, just start. Take the Faculty Development course and tell the instructors that you want to start teaching.

The more you teach, the easier it will be, and the better instructor you will be. You just have to start.



Second, it is wonderful to work in a place where we are all on the same team. We all benefit when justice is done, and high-quality work helps maintain the DOJ’s reputation as the country’s best law firm. Sharing information is crucial to accomplishing this goal. Training enables us to share our knowledge in an open, welcoming forum. Thanks to Ed Hagan, and now Chris Fisanick, a lot of incredibly helpful information can be found on USABook.

The NAC is a superlative schoolhouse filled with competent, supportive employees who truly care about student learning. We all know that travel to and

from the NAC is often difficult. (Travel horror stories are the number one lunchroom topic).

However, once you get there, as one Yelp reviewer explained,

“ This place is awesome. I would live here if I could. The food is delicious—especially the cheese grits! It's like a soft warm fuzzy blanket. ”

(2/24/2015)

Last, but not least, I always learn when I teach. I learn when I put the materials together, when I listen to the other instructors, and when the students ask questions. There has *never* been an occasion where I didn't have to tweak my materials after my presentation. On a personal level, teaching has made me a better prosecutor.

Producing better prosecutors, who, in turn, help mentor new prosecutors throughout the country, represents the best of the Department of Justice. For U.S. Attorneys and Division Chiefs who may miss the folks they have come to rely on when they are teaching at the NAC, instructors improve the work that we do and build valuable relationships that benefit both the sending and receiving districts. Who hasn't called on a NAC contact for assistance? People like Charysse Alexander (NDGA), Dan Gillogly (NDIL), and Stew Walz (UT) are national treasures for what they have given to the Department's training efforts, and we have their districts to thank for generously lending their expertise to help support the DOJ's mission.

Bonnie S. Greenberg is an Assistant Director for the National Advocacy Center, on detail from the United States Attorney's Office in Maryland. She has worked on a wide variety of cases, including violent crime, child exploitation, narcotics, immigration and white collar. Greenberg teaches trial advocacy, magistrate court practice, violent crime, and support staff for the National Advocacy Center. She is also an adjunct professor at the University of Baltimore School of Law.

Page Intentionally Left Blank

Designing Training to Improve Employee Performance

Think about the best training you ever attended—a training where you learned a lot, developed new skills, and then used your new knowledge and skills to improve your performance at work. Essentially, you became a better employee because of the training. What did that training look like, and more specifically, what did the instructor of that training do to make it effective? If you're like most, your thoughts and comments were similar to these:

“I got to practice the skills that were demonstrated in class, and the experienced instructors gave me helpful feedback on what I did right and wrong.”

“She provided hypotheticals where we had to make decisions based on what we had just learned. I was able to immediately apply information to real-life.”

“He kept the class engaged the whole time by posing good discussion topics, allowing time for questions, and facilitating discussions and takeaways.”



So just how do great instructors do these things? How do they engage the audience, facilitate interesting discussions, and create time for practice and feedback? How do they balance talking and lecturing with practical activities and discussions? Does teaching just come natural to them, or is there some secret to their success?

The Backward Design Model

The secret is that the best instructors have the best *designed* training, and they don't just “wing it.” Instead, they create comprehensive, written plans and frameworks for their trainings that include (and include time for) many of the instructional activities just mentioned. They also give comprehensive thought to their audience's needs and what they want their audiences to do better as a result of the training.

If this effort sounds hard or time-consuming, thankfully, there is a model for designing training this way. It's called the Backward Design Model, and it's a six-step process that guides instructors through the thought, planning, and framework needed to design, develop, and deliver effective training.



The Backward Design Model

The Backward Design Model (above) is “backward” compared to the way training is often put together, beginning with step six, structure the training, followed by step five, determine critical content and materials. Many times instructors never get past those two steps and end up with a content-rich lecture with no practical or engaging activities. Let's examine each step of the Backward Design Model a little more closely and see how great instructors use the model to create effective training designs.

Step 1: Describe the Audience

Understanding the target audience and determining their learning needs, wants, and challenges is an essential element of any training plan. Creating training that the intended audience cannot or will not

use, or from which they cannot benefit, is pointless and wasteful. Before creating or modifying their training, great instructors thoroughly analyze their audiences and answer the following questions:

- *Who is the target audience?*
- *How much do they know about the topic?*
- *What skills and experiences do they have?*
- *What challenges do they face with this topic?*
- *Do they care about the topic?*
- *Why should they care about the topic?*
- *What are their attitudes and anxieties toward attending training on this topic?*

For example, say you have identified the following issue in your district—employees can’t find their case-related emails—and you are developing a training to assist. In this case, the (*target*) audience would likely be attorneys and legal staff who are working on critical cases and are often frustrated because they can’t find their or others’ case-related emails (*challenges they face*). They will likely have a fundamental understanding of Microsoft Outlook and their district’s shared drive and case files. They may or may not know how to use Adobe Acrobat (*knowledge, skills and experience*). They probably don’t really care about or have time to attend training, and they just want to know what to do to find emails (*attitudes and anxieties*).



Step 2: Define the Objectives

Objectives drive the design of the training and keep the training on track for the instructor and the audience. Great objectives are learner-focused, indicating what the learner will be able to know and do better as a result of the training. Learner-focused

objectives typically include a verb and a noun and begin with a phrase similar to the following:

“As a result of this training, you will be able to . . .”

When writing objectives, great instructors select active verbs such as “analyze,” “demonstrate,” and “create,” in addition to passive verbs like “know,” “learn,” or “understand.” Ultimately, training is about improving performance, and this requires both learning and doing. Identifying what needs to be done in addition to what needs to be learned is key.

Using the previous example of developing a training to help attorneys and legal staff quickly find case-related emails, you might decide on the following performance-based, learner-focused objective:

“As a result of this training, you will be able to . . .
1) organize emails in your mailbox using subfolders,
2) convert emails to PDF and save them to shared case folders, and 3) search within the PDF portfolio to quickly find the emails you need.



Step 3: Create Culminating Experiences

Culminating experiences are practical activities that are opportunities for learners to demonstrate what they have learned in the training and will be able to do back on the job. Great instructors design these activities to gain concrete evidence that learning has occurred and to help learners transfer knowledge and skills to their workplaces. When these activities are directly aligned with the objectives that have been created for the training, they provide direct evidence that the objectives have been met.

Activities that help the learner integrate knowledge and skills and provide evidence of learning include practicums and practice exercises, hypothetical “what if” scenarios, case studies, critiques, question and answer sessions, and dedicated time for

reflection, discussion, and collaboration among learners. In the running example of creating a training to quickly find case-related emails, a relevant and effective culminating activity could be:

After learning and practicing each skill, learners will be given a comprehensive hypothetical scenario where they will have to quickly provide case-related emails to their boss. To do this, they will have to sort through a simulated inbox to find and organize case-related emails (objective 1), convert the relevant case emails to PDF (objective 2), and search within a simulated case folder to find the emails needed for their boss (objective 3).

Step 4: Create Supporting Activities

In order for learners to be able to showcase their newly learned knowledge and skills through the culminating experiences described above, they first need to be able to carefully practice and apply what they've learned and receive corrective and/or reinforcing feedback and guidance on how they're doing. This process promotes deeper and longer learning and increases learner confidence.

Great instructors design supporting activities where they demonstrate skills and work through problems to provide learners examples of and practice with using knowledge correctly and performing skills successfully. These activities are usually the same as the culminating experiences, except that supporting activities are led by the instructor and they include relevant examples of what to do and what not to do.



With the case-related email training example, the instructor could support learners by walking through how to accomplish each objective of the training:

The instructor will demonstrate how to find and organize case-related emails (objective 1), convert case-related emails to PDF (objective 2), and search within a case folder to find emails (objective 3). After

each demonstration, learners will practice by completing one or more hypothetical tasks, check their answers with each other and with the instructions, and make corrections if needed.

Step 5: Determine Critical Content

Here is where learners often complain the most about ineffective training, making comments like, “This was information overload!” or “I felt like I was drinking from a firehose!” Even if well-intended, when instructors design and deliver lecture-heavy presentations with a lot of information and little to no time to process the information, learners leave the training frustrated and often feeling worse about their ability to solve their challenges than when they came.



To avoid overload, great instructors include only the minimum amount of content needed to support achievement of the objectives, and they “chunk” their content into three or four major sections. Extra information is either not included or provided as supplemental reference for later learning. Materials are also streamlined to provide learners with critical information. Examples of supporting materials include outlines, manuals and guides (often provided electronically), checklists, samples, and templates.

For the training example:

Critical content will cover and will be chunked into three sections, representing each of the three major objectives: finding and organizing case-related emails, converting emails to PDF, and searching within case folders to find emails. Learners will receive a short guide to completing the three major tasks that they will use during the training and after.

Step 6: Structure the Training

The last step in designing effective training is developing the agenda and framework, or what the instructor and learners will do when and in what order. A great framework includes an opening, a

closing, and dedicated time for content, supporting activities, culminating activities, and engagement and feedback. Great instructors typically structure training similarly to this framework:

1. Introduce the topic (include the objectives, framework, and what’s in it for the learner)
2. Present the first set of content and facilitate one or more supporting activities (tell, show, practice, questions, feedback)
3. Present the next set of content and facilitate one or more supporting activities (and so on until all critical content is covered)
4. Implement the culminating experience(s)
5. Review the training objective(s) and discuss how to transfer what’s been learned and practiced to the job; solicit questions
6. Conclude the training/session

Below is a sample fifty minute framework for the case-related email training:

Time	Activity	Materials
2 min.	Opening	None
5 min.	Demonstration: How to Organize Emails Using Subfolders	Guide
5 min.	Activity and Feedback: Organizing Emails Using Subfolders	Guide
5 min.	Demonstration: How to Convert Emails to PDF Files	Guide
5 min.	Activity and Feedback: Converting Emails to PDF	Guide
5 min.	Demonstration: How to Search Case Folders to Find Emails	Guide
5 min.	Activity and Feedback: Searching Case Folders to Find Emails	Guide
10 min.	Culminating Activity: Creating Subfolders, Converting Emails to PDF, and Searching Case Folders	Guide
5 min.	Questions/Discussion	None
3 min.	Closing	None

Presentation Framework

As you can see, this framework contains everything mentioned at the beginning of this article regarding effective training—demonstrations, skills practice, feedback, discussions, and questions. A key point to remember is that this presentation framework was completed *at the end* of the Backward Design Model only after comprehensive thought was given to the audience, their objectives, the culminating experiences, the supporting activities, and the critical content and materials needed.

Great instructors use the Backward Design Process to design comprehensive frameworks for their trainings. Try it for yourself. Maybe the next time you think of the best training you attended, it will be your own, and you will be that great instructor that you’ve always imagined. More importantly, your learners will think the same and will be better employees as a result of your efforts.



Angela M. Dooley, PhD, is an Educational Psychologist with the Department of Justice’s National Advocacy Center in Columbia, South Carolina. As an instructional specialist, she teaches faculty development, instructional design, and evaluation courses for subject matter experts, faculty, and training teams.

Tips for Effective and Engaging Presentations

Some presenters are naturally gifted. They are great storytellers who skillfully impart knowledge, add just the right amount of humor, draw on apt cultural and experiential references that everyone can relate to, and make it look easy. And then there are the rest of us.



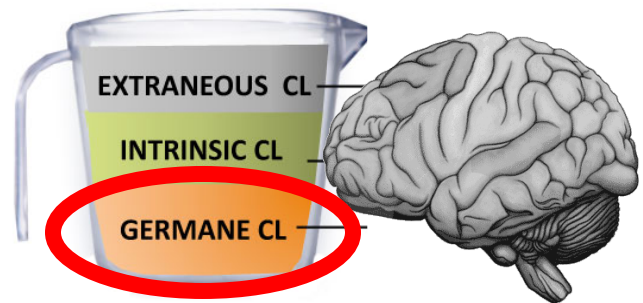
The good news is that everyone who gives a presentation, whether to a class of students or to a jury, can make that presentation more effective and more engaging by incorporating a few simple strategies based on well-established research.

I. Articulate Your Framework

You have organized your presentation in a certain way for a reason. Share that information with your audience. Doing so lets them know what to expect and helps them follow along. If, for example, you plan to make three points, articulate each of them up front and clearly signal when you are finished with point one and moving on to point two. This keeps both you and your audience focused and conveys organization and clarity. This becomes incredibly clear when one reads as many student evaluation comments as I do for presentations at the National Advocacy Center (NAC). Instructors who share the

organizational framework for their presentation, and stick to it, receive consistently positive comments for being clear, well-organized, and easy to follow.

The reason this strategy works can be found in cognitive psychology. When receiving information, the listener can only absorb so much cognitive load. Envision the mind as a measuring cup. There are three things that take up space in the measuring cup: the information itself (the intrinsic load), distractions (the extraneous load, things like the speaker's distracting mannerisms or other things on the listener's mind), and the mental energy the listener must devote to creating an organizational schema for the information (the germane load).¹ Clearly articulating the framework of your presentation decreases this germane load and allows the audience to better focus on and absorb the information you are sharing.



One last tip on the framework for your presentation, resist the temptation to include too much information. How many specific points of a one hour lecture can you remember later? What if that one hour lecture was one of six or more given in a single day? Your audience simply won't remember everything you say, so include only a manageable number of points, and signal those key points clearly at the beginning and again at the end of your presentation to take advantage of primacy and recency.

“Many attempts to communicate are nullified by saying too much.”

—Robert Greenleaf

¹ John Sweller, *Element Interactivity and Intrinsic, Extraneous, and Germane Cognitive Load*; EDUCATIONAL PSYCHOLOGY REVIEW VOL. 22(2), 123-38 (2010).

II. Engage Your Audience

It is extremely difficult to keep any group's attention with a straight lecture. Avoid this by finding ways to engage the audience and give them a chance to reflect on and apply the information you are sharing.

Why is this important? Learning requires two things: attention and processing.² We must attend to something in order to learn. If your audience stops paying attention, your message is not getting through. We also must process new information and make connections between the new information and our past experiences in order for the new information to “stick.” Presenters often share a lot of information but don't permit time for the listeners to reflect on how that information is relevant to problems they need to solve. Without an opportunity to critically think about and use the new information, it is quickly forgotten.



To aid learning and retention when teaching, ask questions in new and different ways to encourage participation, which both increases attention and permits an opportunity for processing. Engage discussion by asking students to talk in groups of two or three and together come up with an answer to a hypothetical scenario. Ask one group of students to come up with an example of the rule and another group to come up with an example of an exception to that rule. Challenge one side of the room to come up with the correct outcome for a scenario and challenge the other side to come up with additional facts that, if added to the scenario, might change the result. Give a court's ruling and ask the students to each individually write down why that ruling was correct based on information you've just covered. Prepare multiple choice or true/false questions designed to

review information provided, and give students a chance to apply that information in a real world situation. All of these approaches give you evidence of whether the students are “getting” your points. It also gives students valuable opportunities to apply the new information as they will need to do when they leave.

Another way to engage an audience in training or in court is to use demonstrations and examples to illustrate your points. Many still remember defense attorney Johnny Cochran saying in the OJ Simpson trial, “If it doesn't fit, you must acquit,” following a demonstration of Simpson trying to squeeze his hands into leather gloves linked to two killings. Your demonstration need not be as dramatic. In the training setting, demonstrate a straightforward grand jury presentation to take the mystery out of that proceeding for those unfamiliar with the federal grand jury process. Demonstrate laying adequate foundation for a commonly introduced type of exhibit or how to use CaseMap to prepare a timeline. Or, simply give examples to which your audience can relate to clarify your point. Using concrete examples is an excellent way to make abstract concepts both more interesting and easier to understand.

Regardless of which engagement technique you use, one of those outlined above, or just adding a helpful visual aid to your presentation, remember that the attention span of your audience is short. At least every seven to ten minutes you will need to re-engage them. If you do not, your audience will stop paying attention, and if they aren't paying attention, they aren't learning anything.

“ Make sure you have finished speaking before your audience has finished listening.

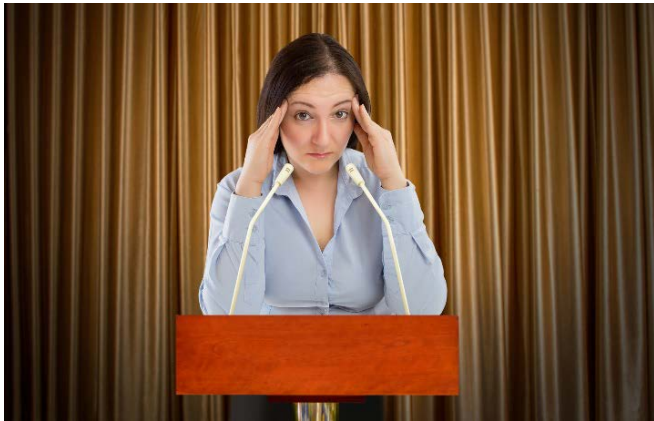
—Dorothy Sarnoff

² Richard E. Mayer, *Cognitive Theory of Multimedia Learning* (2005).

III. Adjust Your Delivery to Offset the Impact of Adrenaline

We often hear it is important to ‘be yourself’ when presenting to a jury or to a class. That’s true. A few adjustments to your delivery style, however, are both helpful and advisable.

A certain amount of nervousness or anxiety is always associated with giving a presentation. No one is immune to the surge of adrenaline associated with public speaking and its physical impacts. You may not be able to control how you feel, but you can and should control certain aspects of your delivery style to increase your effectiveness.



Nervous energy frequently manifests itself as talking too fast and fidgeting, both of which seriously detract from a presentation. When a presenter speaks too quickly, the audience experiences information overload because they do not have a chance to process what’s been said before the presenter has moved on to the next point. One impact of adrenaline is that time seems to slow down for the one experiencing it. Remember that you are the only one having that experience, and often you think you are speaking at a normal rate when your listeners are struggling to keep up. Slowing down and adding strategically placed pauses will increase both the effectiveness of your presentation and your perceived comfort with and mastery of the subject matter. Mastering these techniques will also help limit your use of fillers like “um.”



Fidgeting, like the use of fillers, has a different but equally deleterious effect on a presenter’s effectiveness. Both distract the listener from the content. Remember the extraneous load mentioned earlier? A speaker who overuses “um” or repeatedly adjusts his or her glasses, hair, or clothing is less effective because the listeners lose focus on the content of the presentation and instead begin to focus on the distractions. To avoid fidgeting, try the “ready” position for public speaking, hands at waist height, fingers touching.

Doing so leaves you free to gesture appropriately (and advance your slides if necessary), but gives you a default place to keep your hands. If you don’t think you fidget or use fillers, or if you aren’t sure whether you do, watch a video of yourself presenting, or ask a friend to watch and give you feedback.

“There are two kinds of speakers, those who are nervous and those who are liars.

—Mark Twain

IV. Summary

The best way to master the art of effective presentations is to practice. Even those of us who are not naturally gifted orators can continually improve, but it does require a commitment to spending some time focusing not only on what we’re going to say, but how we will say it. Having a clear framework that doesn’t cram in too much content for the time allotted, planning ways to engage the audience and the intervals at which we will do so, and adjusting the pacing of our delivery and eliminating distractions of our own making, will go a long way towards helping

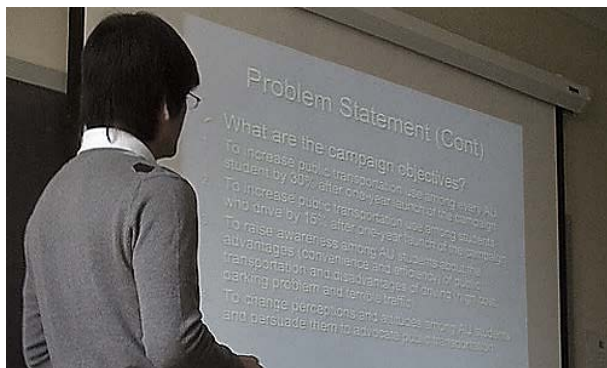
us appear like naturally gifted presenters. Even if we never achieve that goal, employing these strategies will help improve our teaching and communication skills, which, in turn, improves the quality of instruction we provide to our Department of Justice colleagues.

Mary Beth Pfister is Assistant Director for Curriculum and Faculty Development at the National Advocacy Center, where she has developed training for the Department of Justice since 2008. She previously served as a criminal Assistant United States Attorney in the District of Arizona. Before joining the Department, she was an equity partner at a law firm in Phoenix. She earned her J.D. from Harvard Law School.



Developing Effective Materials and Slides

Let's face it, we often develop our presentation materials as an afterthought or as an "I'll just print my slides as a handout" surrender. Somehow materials almost always take a distant second place to what we are going to say in our presentations, especially for those of us who like to include our entire speech on our slides (and then read it)!



However, regardless of how resounding a speaker we are or think we are, our materials stay with students long after the memory of our lecture or presentation has faded. Our materials actually serve as the *afterthought* and reference for students, so it's worth making sure they are helpful and effective. Here are some quick and easy ways to decide what and how much material to include in a presentation, and to design those materials in a way that enhances learning.

I. What Materials to Choose and Use

Instructors commonly include as part of their presentations and/or as printed handouts for students one or more of the following types of materials: 1) overhead/PowerPoint slides, 2) annotated outlines, 3) short summary sheets, 4) manuals or guides, 5) samples or templates, and 6) activity materials. Each has its advantages and disadvantages as materials for instructors and as handouts for students.

For example, instructors can use PowerPoint slides to help remember their presentation structure and key points and to display graphics and animations when speaking. However, if the PowerPoint slides contain an abundance of text, detailed graphics or pictures, when printed in the common three-slides-to-a-page fashion, they don't often print legibly and aren't helpful to students as handouts (see top right).

Opening Statements Nuts and Bolts

- 1) Opening Statements are **not** argument, but all argument. Structural argument versus argumentative statements.
- 2) NO NOTES! Use objects/evidence/chalks as an outline.
- 3) Keep it simple – If you can't remember it, neither will the jury.
- 4) Unassailable – Do not say anything that will lead to easy attacks in defense opening (e.g., contrary to what the prosecutor just promised, you are not going to hear or see x).
- 5) Keep it short. As economical as you can.
- 6) No introductions. No one cares. The evidence rules, not your name.
- 7) Obligate - Give the jury a reason to convict and desire to convict.
- 8) Have stock opening and closing statements.

PowerPoint Example of Excessive Text

Here, the instructor would be clearer and more effective using a simpler PowerPoint slide like the one below or by providing an annotated outline.

Opening Statements Nuts & Bolts

1. Structural argument only
2. NO NOTES
3. Keep it simple
4. Unassailable
5. Keep it short
6. No introductions
7. Obligate the jury
8. Have stock opening and closing statements

PowerPoint Example of Appropriate Text

When deciding what materials to choose, ask yourself these questions and consider these options:

Do I really need PowerPoint slides?

PowerPoint slides are helpful for displaying graphics, animations, and video/audio clips. They are not particularly helpful for text. Often, annotated outlines are more helpful for text dense presentations, as you have more room to write.

How will the audience use my materials?

Provide samples if the audience is going to use them during class and later as job aids. Provide manuals or guides only if used during class; providing them as a later resource often results in a trip to the recycling bin. For complex activities during class, provide materials and instructions so students know what's expected during the activity, and then they can review them later.

How much prep time do I really have?

If you have months of uninterrupted time to prepare your materials, you may want to develop and provide slides to use, an annotated outline to provide, and some samples and templates to be used later. However, if your presentation is next week, sticking with one type of handout, like an annotated outline, results in the best quality.

II. How Much Material to Include

Just as instructors tend to overload with too much content, they also often provide too many materials regardless of whether they are directly relevant to the presentation. I once observed a thirty minute presentation on fundamental bankruptcy principles that was part of a longer overview course. Instead of providing students with just a one page summary or overview of the bankruptcy basics (i.e., codes, players, and chapters), the instructor provided all her slides (about fifty-five of them), several sample bankruptcy forms, and a seventy-six page document on the basics of bankruptcy. Information overload!



While content is critical, overloaded content or materials does not lead to effective learning. Key considerations for how much material to include are: 1) don't overload, 2) think of how people are going to use the materials during training and after; 3) keep materials relevant to the training objectives.

III. How to Develop Materials Effectively

Once you've decided what and how much material to include in your presentation, how do you create those materials in a way that promotes learning? One of the most important things that you can do with your materials is to make sure that they are structured in the same way as your presentation. Let's use the bankruptcy basics presentation as the example again. Say you decide that your thirty minute presentation will cover the following sections: 1) the bankruptcy code, 2) the bankruptcy players, 3) the type of bankruptcy, and 4) the normal procedures that take place when a bankruptcy petition is filed. You decide to include a one page summary of this information as the handout for students. As you can see on the right,

the summary handout includes the four sections of the presentation in the order that they are presented.

Bankruptcy Code	
<ul style="list-style-type: none"> - No state bankruptcy laws; all a matter of federal law - Previously call the Bankruptcy Act (Code was passed in 1978) - Code is divided into distinct chapters - Code revised in 2005 by BAPCPA (added an affordability test) - Goals: (1) fairly distribute assets (2) give debtor a fresh start 	
Bankruptcy Players	
Debtor	Person filing bankruptcy
Creditors	People to whom the debtor owes money
US Trustee	Oversees bankruptcy process
Chapter 13 Trustee	Oversees and operates Chapter 13 cases
Chapter 7 Trustee	Panel trustee who takes in & sells assets
Chapter 11 Trustee	Debtor as trustee (debtor in possession)
Chapter 12 Trustee	Oversees financial operations only
Bankruptcy Types	
Liquidations Chapter 7	Take the assets and sell them Distribute monies to creditors based on an equitable distribution schedule
Reorganizations Chapter 11 Chapter 12 Chapter 13	Keep the entity going, restructure debts Business Reorganizations Farmers and Family Fishermen Reorganizations of individuals w/regular income (wage-earner)
Bankruptcy Procedures	
<ol style="list-style-type: none"> 1. Bankruptcy petition & schedules (plans, 13) filed by debtor 2. Automatic stay at time of filing 3. Creditors file proofs of claim 4. Claims ordered by priority (priority, secured, unsecured) 5. 341 meeting (first court hearing) is scheduled 6. Plans filed, assets liquidated, and/or debts discharged 	

Sample One Page Summary Handout

IV. Conclusion

Materials aren't and shouldn't be an afterthought. With a few key considerations about what and how much materials to include and how to develop those materials effectively, your materials can shine as bright and as long as you do (maybe longer)!



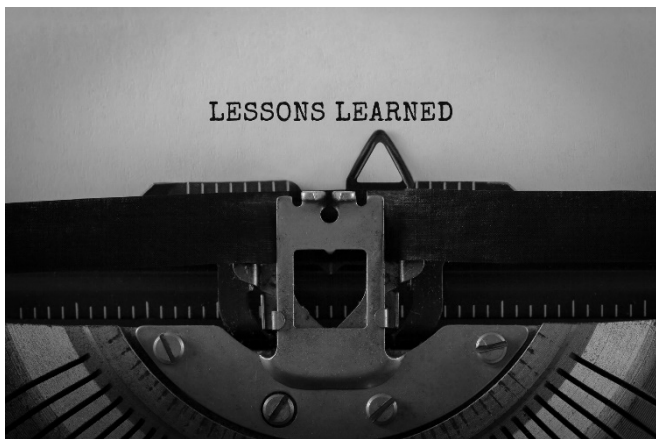
Angela M. Dooley, PhD, is an Educational Psychologist with the Department of Justice at the National Advocacy Center in Columbia, South Carolina, where she conducts research on learning and teaches instructor development and evaluation courses for SMEs and training teams.

Page Intentionally Left Blank

Lessons Learned

Confessions of a Training Officer

I have been the training officer in the Tax Division since 2001. As is true of many training officers around the Department, I started my career in the Department as a trial attorney. The Division selected me for the training position because of my legal knowledge and experience and interest in training. However, I did not have any formal background in adult education. For quite a while, I modeled the training my office sponsored on training I had attended in the Tax Division or at the National Advocacy Center (NAC). Gradually, I started to try to make changes in the way the Division approached training. The hope was that we could improve the process of conveying information in a way that people would both retain it and be able to remember what they learned when they needed to apply it. Along the way I have learned some lessons about how I approach training that I hope may be helpful to others.



The first and most important lesson I learned was that I needed to know more about how adults learn to be good at my job. Two books that I found particularly helpful on that score are: *Telling Ain't Training* by Harold J. Stolovitch and Erica J. Keeps;¹ and *Make it Stick: The Science of Successful Learning*.² The lessons I describe below are outgrowths of what I learned from these books. With that said, here are some lessons I learned along the way.

¹ HAROLD J. STOLOVITCH AND ERICA J. KEEPS, *TELLING AIN'T TRAINING* (Association for Talent Development, 2d Ed. 2011).

I. Start Preparation for Every Training With the Question

What do we want the participants to be able to do after training that is new or different



For a long time, I focused too much on what I wanted students to know and not enough on what I wanted them to be able to do. There are two reasons I have found it helpful to focus on doing rather than knowing. First, focusing on doing helps me distinguish between essential and nonessential information. No matter how long we can devote to a training program, we can never cover every nuance of every issue. Once you focus on what someone needs to do differently, it is much easier to identify critical information from information that would be nice to have but may not be essential. However, just because something is not essential does not mean you must eliminate it. Often that information is well suited to a handout of further references that you can distribute to participants at the end of the training.

II. Make Sure to Keep the Primary Focus on Meeting the Needs of the Students Receiving the Information Rather Than the Needs of the Presenter

Now I grant you that this just sounds ridiculously obvious. And it is, until it isn't. Far too often, I have seen instructors who determine that they have a certain amount of material that they must cover. The instructor focuses so tightly on covering everything that he or she races through the outline, talking a mile a minute, and leaving no room for questions or discussion. Even worse, instructors frequently pepper these presentations with repeated statements that they have much more information to cover than the time allows. When that happens, all too often, the presentation leaves the students behind,

² PETER C. BROWN, HENRY ROEDINGER, III, AND MARK A. MCDANIEL, *MAKE IT STICK: THE SCIENCE OF SUCCESSFUL LEARNING*, (2014).

simultaneously overwhelmed by a torrent of words but still with the feeling of having been cheated that there were even more words to hear that they didn't have time for. The only person who is satisfied is the presenter, who checked off all the things he or she wanted to cover. Having learning objectives based on what you want students to be able to do helps keep the focus on the students rather than the instructor.



Students always say they want to benefit from the experience of more senior people, and yet students often react negatively to instructors who just tell war stories. Learning objectives are very helpful for distinguishing between anecdotes that bring learning to life by giving information a narrative context that makes it easier to remember, and war stories. If an instructor cannot tie the telling of a particular anecdote to a learning objective, the instructor should strongly consider the possibility that, at least in the context of a particular learning experience, the anecdote is likely a war story and would best be saved for another time or place. A story that advances learning is about the learning objective—and hence, about the students—while a war story is about the presenter.

III. Do Not be Afraid of Offering Training Classes that Last Longer Than an Hour

If the amount of essential information required to meet the learning objectives exceeds the time you have set in your mind at the beginning of the planning process, consider expanding the time. I used to think all training classes offered in house

should be no more than an hour. What I have learned is that people will come to longer training if the following things are true:

1. Participants are convinced the training will be useful to them in doing their jobs;
2. Participants know, in advance, how long the training will last; and
3. The instructor makes sure that they chunk information so that participants are not asked to maintain their focus for longer than twenty minutes at a time without a break or a change in activity.

The bottom line is that participants/students and instructors/presenters both deserve to have training scheduled so that the time they are investing is sufficient to do justice to presenting the information in a way that is best calculated to lead to understanding, retention, and retrieval.



IV. Part of Switching from Knowing to Doing is that Good Training Gives Opportunities to Try to Use Their New Information or Skill During Class

Focusing on observable skills will help students and the instructor assess whether students really understand the new information. We have all had the experience—for me in middle school math class—of watching someone else do something and “getting it” and then finding that “getting it” proved too superficial to permit you to apply the new information yourself.

It is easy to see the value of learning by doing when it comes to a trial skill like using leading questions on cross-examination. Sometimes, it takes a little more creativity to come up with activities that allow students to try to use other new information or skills that do not seem as obviously suited to learning by

doing. This is where the fun in developing training really starts, because you can really let yourself be creative in thinking up activities.

For example, we had a class on how to handle a pretrial conference where we wanted people to have experience with a range of issues that can arise. In the old days, an instructor might have put together a list of best practices, or told some war stories about experiences they had at various conferences. In this case, the instructors made an activity where they created short scenarios on pieces of paper and gave each person in the class a different scenario. One instructor played the judge, and the other instructor played opposing counsel, if one was required. Each participant then took a crack at dealing with the scenario. Since each one was different, the whole class had the benefit of thinking about a wide range of situations and circumstances and to try dealing with things on the spot, as would typically occur in a pretrial conference.



V. Do Not Be Afraid to Try Something New

I used to think which training techniques would work or not work for my students based on what I thought I knew about how lawyers typically react. I was hesitant to try using icebreakers or to ask students to do some pre-work before class because I was sure our students would just roll their eyes or refuse to participate. However, the more I read about adult education, the braver I felt to try some of these things. While my experiments have not been universally successful, they have worked out more often than not.

For example, for a particular training activity we needed students mixed into random groupings. Overcoming my fear of icebreakers, I asked the class to sort themselves by birthday without using any words. Much to my surprise, the students willingly participated and seemed to have a good time doing so. Once they all lined up by birthday, we just

counted out our table groups from there, giving us the random groups we needed. We reaped the benefits of greater student engagement from their active participation in the exercise and the practice it gave them with nonverbal communication skills.

We have had similar experiences with assigning pre-work. We have begun asking people to read, or even better, to do something before coming to class. A group of instructors who were planning to teach a class on expert witnesses gave the students the names of two real people to research as potential experts prior to coming to class. I was pleasantly surprised to see that nearly every student did the assignment before class. From a teaching point of view, this use of pre-work made the subsequent class much more useful to the students. The assignment created a context for the new information that they received in class. That context in turn should make it easier for them to form connections between the new information and what they already knew, which, in turn, is likely to aid their retention and retrieval of the information in the future. The pre-work also paved the way for students to participate actively in the learning enterprise by drawing on the knowledge and ideas of fellow students under the supervision and guidance of the instructors. Finally, it allowed the class to practice the kind of analysis they would have to do with a real case as they discussed whether, based on their research, they would use the person as an expert or not.

In short, I have learned to be more willing to try new things, even if I am not sure they will work. In the worst case, they do not work and we either adjust on the fly or do something differently the next time we offer the class.

VI. Do Not Be Afraid to Ask Presenters to Do Things the Way You Think They Should Be Done



In our peer-training culture, instructors often participate in training as a collateral duty. Usually, we select instructors because they are particularly competent. Competence often walks hand in hand with a heavy workload. Aware that I was asking for something extra, I have often been too deferential about requiring busy instructors to do things in preparing their courses that I know will make them better from a learning perspective. I confess that I have allowed people to proceed with the barest of outlines, to lecture for a solid hour, to read PowerPoint slides, or tell war stories that lack a clear teaching point.

I changed my mind when I started to pay more attention to the cost of training in terms of the hours students spent as participants, time they were not able to put to use doing other work. If forty people attend a class for an hour, the time they spend by the time they get to class, attend the class and get back to a task of their own, will exceed the time of an entire workweek for a single employee. In order to justify that opportunity cost, it is my role to make sure that the training that they are getting is as useful as possible.

“There is no single thing that I have done to make training more effective than to ask people to do dry runs before making a presentation.”

I have become less shy about insisting that the instructor work with me in advance to develop three to five learning objectives for the training that are framed in terms of an observable behavior we want the students to engage in as a result of the training. I have also become less shy about insisting on seeing slide decks in advance and working with instructors to trim slide presentations down so they are readable, do not detract from the presentation, and are not so dense that the presenter could simply read them aloud. I have become less shy about asking presenters to put dense content into their speaker's notes rather than including all that content on slides they will show during class. Most importantly, I have become less shy about asking presenters to do a live dry run with a few people in the room to provide a realistic audience and to give feedback.

If the person who is going to facilitate the learning of others does not have the time to prepare a presentation in advance, develop learning objectives and practice the presentation, I think it is often better to look for another instructor for that program. All the expertise in the world is of little use to students if it is not well presented.

VII. Summary

1. Make sure you can articulate learner-focused behavioral objectives that you want the class to achieve *before* you start planning the class.
2. Include activities that allow learners to practice the skills you have identified in your learning objectives in the course design. If the entire course asks nothing of learners but listening to an instructor talk, go back to the drawing board.
3. Let the difficulty of the content and the activities that you need to achieve your learning objectives dictate the length of the class. Do not be a slave to a preconceived idea about how long a class can be. If you really only have an hour, narrow your learning objectives to the time you realistically have. Racing to cover mountains of material in a short time may satisfy a presenter's sense of accomplishment, but is unlikely to lead to meaningful learning.

4. Try new things. It is good to shake things up. If something does not work, evaluate it carefully and fix it for the next time, or try something different.

Rachel Cramer has been the Director of the Office of Training and Professional Development for the Tax Division since 2001. Prior to 2001 she litigated civil cases for seventeen years in the Tax Division and in private practice in Washington, D.C. In addition to her law degree, Rachel has a Masters in Human Development from Virginia Tech.

Page Intentionally Left Blank

Practical Tips for Effective Panels

It would be easy (and probably more fun) to write this article if I were writing about all of the ways in which using panels as a training format can go wrong—lack of a strong moderator, a speaker who monopolizes the panel, lack of energy, an abundance of egos, and/or lack of structure and organization. Unfortunately, you have all probably witnessed some of these issues as a participant or viewer of panels. In the abstract, it seems like such a good idea to have three or four individuals who have expertise and experience provide their perspectives on a certain topic or topics in an interactive discussion. Yet over the years as I have planned, moderated, and served as a panelist on numerous panels, I have learned that an effective panel requires a great deal of planning, management, and coordination. While most of my training experience has focused on training in the national security arena, below are ten practical tips for improving panel presentations on any topic.

I. Determine Whether a Panel is the Best Way to Present the Information



If you are planning a training, the first question to ask is whether a panel discussion is the most effective way to present the information. If the goal of the presentation is to provide a primer or introduction to a topic for attorneys who are new to a subject area, a single presenter or a team teaching format with PowerPoint slides or an outline may be a better way to convey the information. Typically, the panel format works best for more experienced attorneys who have learned the basic concepts of a topic, but

who need to learn more about how and when that concept arises in the context of different cases.

One type of panel that I have found to be effective is a discussion of complex issues in the context of several recent cases. For this type of panel, I usually designate a moderator from Main Justice who has a national perspective on the cases and issues to be discussed. I then choose a panel to reflect my audience. If the audience is made up of prosecutors only, I choose two or three Assistant United States Attorneys (AUSAs) who have prosecuted recent cases. If the audience includes both prosecutors and agents, I choose teams of AUSAs and agents. In some instances, the panelists might discuss how a decision they made in the investigation or prosecution of their case worked in their favor, but, more frequently, the panelists discuss what they would do differently had they known then what they know now. Evaluations often reflect that attendees appreciate panel members addressing not only what they did right, but also what they did wrong or should have done differently.

“It is also helpful to include a one-page “Case Facts” sheet in the materials for each case that includes a brief description of the facts, statutes charged, and the status of the case.”

These fact sheets can be sent to the attendees prior to the training or provided in the printed materials so that attendees can read them prior to that particular session. By providing information on each case discussed, the panelists do not have to spend as much time describing the facts of their case and can instead focus on conveying useful tips. Using this format also helps to cut down on “war stories” which, while entertaining, can sometimes limit time spent providing more relevant and helpful information to the audience.

The use of a panel can also be effective when describing a process or practice. For example, if the goal of the presentation is to provide information about how a certain process/practice is conducted,

the panel would include individuals who have a specific role in that process/practice. The goal of the panel is for the panelists to describe their role, how they interact with others on the panel, and how and when they might interact with the AUSA. I sometimes use this format when teaching how Foreign Intelligence Surveillance Act (FISA) coverage is initiated and approved in the national security context since that process involves FBI agents, National Security Division (NSD) attorneys, and FBI attorneys. The panel format might also be effective to describe a process that requires input from several outside agencies, for example, to describe how an AUSA might obtain a licensing decision in an export control matter, since several agencies may be involved in that decision.

I have also used a panel format to introduce AUSAs to other agency partners whom the AUSAs may be working with on their cases. For example, it is an effective way to introduce new national security prosecutors to our partners in the U.S. Intelligence Community and to describe each agency's role and when and how they may interact with the AUSA.

The panel format also works well when information is conveyed through the use of scenarios (either hypotheticals or based on actual cases).

National security prosecutors—especially experienced ones—learn best when scenarios are used to facilitate an interactive discussion. In order to ensure input from prosecutors with different perspectives, it is best to choose three or four instructors to facilitate the scenarios. Asking each facilitator to take the lead on at least one of the scenarios, and then provide input on the others, usually ensures a lively and interactive discussion among the panelists and with the audience. I have used this format to discuss legal and ethical issues in national security cases; to discuss issues that may arise in the FISA context; and to discuss issues arising with the Classified Information Procedures Act (CIPA), but scenario-based discussions can work with almost any topic.

Finally, I am not a fan of using a panel format to present a series of presentations that are loosely

connected and which could each stand on its own. Evaluation comments from attendees are generally negative when a segment is described as a panel discussion but instead is a series of separate presentations. These types of panels are often the product of an abbreviated or hasty prep session in which each panelist is given fifteen minutes to convey their information. While there are instances in which this may be an efficient way to convey information that has a common theme, this type of panel can often be wooden and ineffective. I have found that evaluations are often critical of this approach, with comments that the panel would have been better if the moderator had facilitated a more cohesive and interactive discussion of the issues. If there are short bursts of information that need to be conveyed, I favor an “interview” approach in which an interviewer introduces the interviewee and then asks questions that enable the interviewee to convey the information that is specifically applicable to the audience in a quick and dynamic manner.

II. Designate a Strong Moderator and Determine What the Moderator's Role Will Be

One key to effective panels is to designate a moderator who can lead the panel in an interactive and informative manner. A strong moderator is someone who is prepared and organized and can smoothly transition the panel from topic to topic within the given time constraints. The moderator must also be able to (nicely) interrupt a panelist who is long winded, or a member of the audience who asks too many questions or a question that would take the panel off track.

It is also important to discuss with the moderator what his/her role will be with regard to substance. For example, in the complex issues panel described above, one primary role of the moderator is to provide the Main DOJ perspective on the issues being discussed. While the panelists may discuss how the issue was handled in the field, the moderator should address the same issues from the perspective of Main DOJ or FBI Headquarters. It is important to have a moderator who is secure in his/her role and doesn't shy away from bad news. For example, there may be instances in which an AUSA had a negative experience with Main DOJ or FBI Headquarters in the investigation and prosecution of the case. A strong and secure moderator can bring those points

out in a constructive and informative manner without becoming defensive or resentful.



For the process/practice panel described above, I try to select a moderator who is familiar with the process/practice, but who does not necessarily have a role in it. This enables the moderator to focus exclusively on providing transitions to keep the panel on track and on time. For panels that discuss scenarios, I select moderators who can facilitate the discussion without monopolizing it, since the purpose of this panel is to engage the audience and obtain input on how the scenarios might play out.

Finally, I hesitate to designate a moderator who has the same role as the panelists. For example, if the moderator had a recent case that will also be addressed on the panel, it is more difficult to effectively moderate the panel in addition to providing substantive information. In my experience, the panel works better when the moderator has a distinct role that is separate from that of the other panelists.

III. Identify Short Pre-Reads and Other Materials that Eliminate the Need for Introductions and Context

Since time management is always an issue in training, providing information in the written materials and/or ahead of time allows the panel to get quickly into substance. As mentioned above, I provide Case Facts to attendees whenever a case is discussed by either sending those out to attendees ahead of time and/or including them in the written materials. The Case Facts are put together by our very capable Office of Legal Education (OLE) Training Specialist, who uses press releases, indictments, and other sources to create a draft, and then sends the draft to the AUSAs for their input and edits.

Depending on the complexity of the case, the moderator may need to provide a short summary of the facts for each case or ask each panelist to provide a very brief summary. I ask the moderator and/or panelists to prepare that summary ahead of time so that they can ensure it is brief and focuses only on facts that will aid the discussion. Since we cannot assume that every attendee has reviewed the Case Facts prior to the presentation, the brief summary also helps to ensure that everyone is on the same page before the panel moves to the substantive aspects of the discussion.

For the process/practice panel described above, it is always helpful to provide forms or sample documents in the written materials that the panelists will refer to during the discussion. For example, if an FBI agent refers to the document used to request a FISA, that document should be included in the materials and the panelists should refer attendees to it when that aspect of the process is discussed. For the scenario-based panel, I find it is helpful to provide the scenarios in the materials, with space for notes below. In most instances, there are no right or wrong answers as to how a scenario plays out, so allowing the AUSA to take notes as issues are raised and discussed, and to have that document for future reference, is helpful.

The moderator should be encouraged to provide very short introductions of the panelists unless there is a particular reason the introductions need to be longer. OLE provides information about the presenters in the agenda packet, which usually gives enough information for the attendees to learn who the

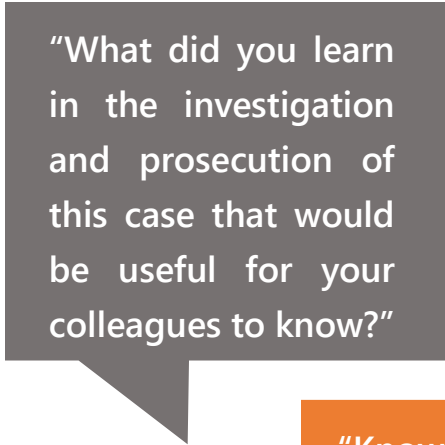
presenter is and how they might make contact in the future. Lengthy introductions are unnecessary and take away from time spent on substantive discussions.

Finally, I have experimented in the past with sending out longer “read ahead” materials for the audience to review before the training. While this may work well for courses in which fear of failure may be an issue, e.g., Trial Advocacy or Appellate Advocacy courses, I have had mixed results in other types of trainings. Understanding that the audience has a challenging “day job” that doesn’t necessarily stop when they get on an airplane or arrive at the training venue, I have found that only a small number of participants read the materials ahead of time. It is probably best to send materials ahead of time only when the materials will supplement the learning experience, but not when they are necessary to understand the presentation.

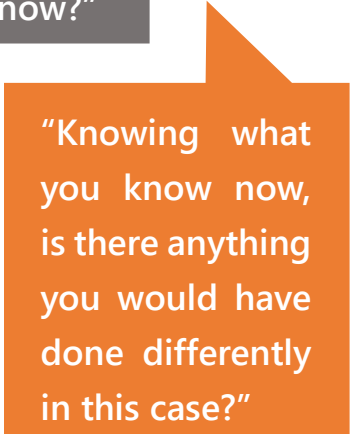
IV. Conduct a Conference Call About Two Weeks Out In Which the Moderator and All Panelists Participate

Conducting a conference call with the moderator and all of the panelists about two to three weeks prior to the panel presentation is essential for a number of reasons. First, it allows an opportunity to describe who is in the audience and the experience level of the audience. Second, it allows an opportunity to discuss the goal of the panel and the role of the moderator. Third, it allows the panelists to discuss and determine what would be the most useful information to convey.

With regard to the complex issues panel in which AUSAs discuss recent cases, the moderator or I usually start the call with a couple of simple questions for each panelist:



“What did you learn in the investigation and prosecution of this case that would be useful for your colleagues to know?”



“Knowing what you know now, is there anything you would have done differently in this case?”

These are usually easy questions for the panelists to answer. As they speak, I take comprehensive notes, which I turn into a working outline for the panel. I try to organize the discussion by themes—use of confidential human sources, charging decisions, discovery issues, and trial issues—depending on what is discussed. By organizing common themes in this way, the moderator can move from panelist to panelist, asking about a certain topic, which leads to a more interesting and lively discussion. While developing the outline is essential, I also remind the panelists that it is not an attempt to script their remarks, but simply a guide to direct the discussion. I also remind them that some moderators do not stick to the outline (one of my best moderators likes to follow the discussion rather than the outline) so they should not expect that the outline will necessarily be the order of discussion.

For the scenario facilitators, I use the conference call to discuss each scenario, decide who should take the lead on each one, and then take notes while they discuss the scenarios. I then turn those notes into Instructors’ Notes that are provided to the facilitators only. I try to include relevant cases, policies, and/or ethical rules in the Instructors’ Notes if appropriate for the discussion.

Finally, there are instances when not all panelists can be on the conference call or a panelist is replaced after the conference call occurs and, therefore, a

discussion with a panelist must be conducted separately from the others. In my experience, conducting separate calls results in a less cohesive and less successful panel. When everyone who is on the panel is also on the call, each helps remind one another of topics or issues that are useful to present and everyone gets a sense of how the panel will flow. While having everyone on one call is not always possible, it should always be a goal.

V. Be a Time Cop (Or Not)



One of the most difficult aspects of planning or moderating an effective panel is setting out time constraints for each panelist without cutting short a useful and interactive discussion. For most panels, I generally learn from the conference call how much time each panelist needs and then develop estimated timeframes that are included on the outline. It is important to remember that some panels do not warrant equal time for all panelists. For example, on the process/practice panel, there may be some part of the process/practice that takes longer to describe or is more significant than others. Including those estimated time constraints in the outline helps the moderator and the panelists understand how much time they have to discuss each part of the process. During the panel, the moderator also has a duty to limit or redirect both questions by the audience and any lines of discussion by the panelists that go too far beyond the scope of the planned presentation.

The more difficult time management issues arise when using scenarios in a facilitated discussion with the audience. I have had situations in which four scenarios were to be discussed in a one hour timeframe and the panel didn't get past the first scenario. Neither the moderator nor I ended the discussion because we recognized that it was

extremely relevant and useful. While a small number of the attendees noted in the evaluations that they wished we had covered more of the scenarios, the presentation was highly regarded and one of the most well received of the training. In these types of panels, it is important to have facilitators who understand when the discussion is relevant and helpful and when it is time to move to the next scenario. Those are tricky judgment calls that should be discussed with the moderator and facilitators prior to the presentation.

VI. Think Creatively About Your Room Setup

In my experience, the room setup is more important than you might think for facilitating an interactive discussion. For presentations in which audience participation is encouraged, try to reserve the smallest room possible that will ensure everyone a seat. If the room is large and the audience is spread out or sitting in the back rows, the most talented moderator and panelists will have a difficult time engaging the audience. It is important that the audience has a clear view of the panel and that the acoustics in the room allow for everyone to be heard. When the audience has to walk to a microphone to ask a question or make a comment or have a microphone passed to them before they can speak, the energy in the room dissipates and the discussion suffers. While it is not always possible to have the perfect room set up for every training, it is important to recognize that the room set up does matter and to do everything you can to enhance it.

VII. Think Whether Use of PowerPoints Will Aid or Detract

There are several types of panels in which the use of PowerPoint slides are helpful or even necessary. For example, if prosecutors and agents who prosecuted a significant case are presenting a case study only on that one case, PowerPoint slides can be helpful to illustrate the investigation and prosecution of the case. Especially if the case went to trial, there are usually government exhibits and other visual aids that may greatly enhance the presentation. PowerPoint slides may also be effective when describing a process/practice and the panelists have prepared the slide show together and each contributed slides showing their part of the process/practice. PowerPoint slides may also be helpful to show scenarios that will be used in a

facilitated discussion (although you should also include the scenarios in written materials with space to take notes as described above).

However, there are instances when using PowerPoint slides on a panel detracts from the panel. For example, when each panelist uses a separate slideshow to discuss his/her case or his/her part of a process, the presentation can be disjointed and appear to be disorganized. Using PowerPoint slides in that way may result in several short, separate presentations that are not as useful or interesting as a moderated discussion that moves from panelist to panelist.

I do think it is appropriate to encourage panelists to include PowerPoint slides or outlines in the written materials provided to the audience—even if those materials are not shown during the presentation. Including PowerPoint slides or an outline that describes the facts and complex issues in a case or a specific process/practice can be a good future resource for those in the audience without taking away from what is hopefully an effective and interactive panel discussion.

VIII. Do Use Visuals or Videos if Short and Appropriate

While I discourage the use of separate PowerPoint slides on a panel, I do think a well-timed video or visual can be effective—especially if short and to the point. I have seen this work well on a complex issues panel, for example, when a prosecutor is describing an issue confronted, and uses a short video to make a point. Also, using a one-slide visual to explain a complex part of a process can be effective as long as the visual (or video) is able to be smoothly and quickly shown and brought down so that attention can be refocused on the panel.

IX. Have a Backup Plan

It happens often when conducting training that a moderator or panelist has to cancel at the last minute and someone else is sent to “cover” the panel. Especially because I train in the national security arena, I have learned that these situations will arise often and that they are beyond my control. I do, however, spend time prior to the training thinking of potential back-up plans—especially if I have invited Section Chiefs or high level FBI officials who have important operational responsibilities that might conflict with training. I have found it useful to study

the attendee and instructor lists and think about who might be able to fill in if the need arises. If I can find a potential backup from my current pool of instructors, I find out when that instructor plans to arrive and depart from the training and sometimes even give that instructor a heads up that I may need a backup. Sometimes a moderator or panelist will commit to a training but let me know that there is a chance that a conflict will arise. In those instances, I ask if there is a backup who is available to attend the training if needed and who can participate on the conference prep call so the moderator or panelist is up to speed if called on for duty.

Finally, if a backup presenter is needed, I usually ask that presenter not to dwell on the fact that he or she is a replacement who was called in at the last minute (even if the change is obvious from the agenda). There is nothing that takes the energy out of a panel faster than a moderator or panelist who starts the presentation by saying that he or she was just asked to assist at the last minute and they are not really prepared for the task. My advice to the presenter in that situation is to “fake it” and the audience may never know.

X. Build in Time for Questions

There is no one-size-fits-all when trying to figure out how to make time for questions during a panel discussion. One approach is to discuss with the panelists how long they will need for their particular part, add those together, and then add fifteen minutes for questions to be asked throughout the discussion. Sometimes it works well when the moderator asks for questions after a specific part of the training—either a part of the process being described or a certain theme or topic being discussed.

“

The best tip I have ever received about questions, which is good advice for both training planners and panel moderators, is to ask if there are any questions and then count to ten before ending the session or that part of the session.

”

While a ten second pause might feel awkward at the time, it usually takes the audience a few seconds to recognize that questions have been called for and to ask one. Allowing for a short pause may provide the time needed for the question and answer session to gain momentum.

Kelly Shackelford is the Director of Training and Workforce Development for the National Security Division. She is a former Assistant United States Attorney for the District of South Carolina. She has been with the Department of Justice since May 1992.

Page Intentionally Left Blank

How to Build a Smoking Gun

Imagine that you had access to an insider in a fraud case who could not be cross-examined and that this insider could lay out exactly what the defendant told the victims or what the defendant did with the money. You would spend hours and days with that insider, figuring out how to ask the right questions to elicit the information you need and to make things clear to your future jury.

Documents and data can be the equivalent of those potential insiders, and prosecutors and agents should treat them as such. Investing time and resources into analyzing documents and data and turning them into the equivalent of a smoking gun can strengthen cases and even help make them in the first place.

Two examples from the world of journalism (one fictional, one real) show how powerful this kind of work can be.

In the popular thriller *The Girl with The Dragon Tattoo*, the main character (an investigative journalist) is trying to discover what happened to a girl who has been missing for decades. Witnesses provide little help, some due to limits in their knowledge, some due to hidden agendas.

One big break in the case comes when the journalist goes to the local paper and discovers archived photos from a parade that the missing girl attended on the day that she disappeared. Each photo, in and of itself, is meaningless, just noise. But then the journalist does something with the photos. He takes all of the photos, scans them, and puts them into a chronological sequence focused on the missing girl.



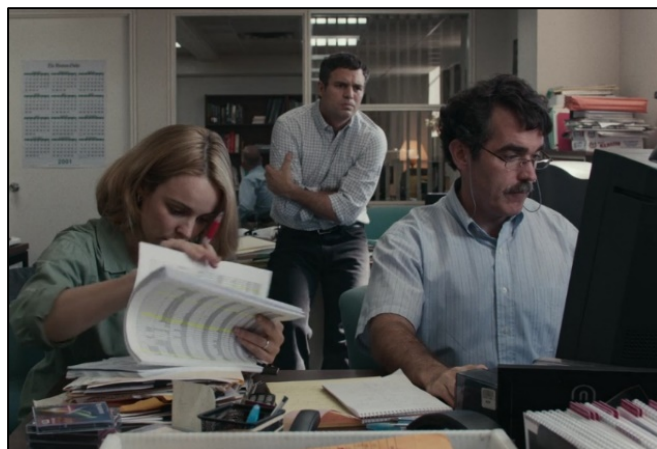
Still from the Swedish-language version of *The Girl with the Dragon Tattoo*

The resulting sequence shows the girl enjoying a parade, and then it shows her reacting with shock and horror when she sees something on the other side of the street. Something happened at that parade that changed everything. Something that turns out to be a key part of the mystery.

Each photo was meaningless on its own, but when aggregated, the overall sequence changed the entire course of the investigation.

In *Spotlight*, the 2015 Oscar-winning movie based on true events, Boston Globe reporters are investigating the sexual abuse scandal within the Catholic Church and focusing on one particular priest who had abused minors. One reporter looks up the priest in the archdiocese's annual directory and realizes that the archdiocese had used a euphemism to refer to the priest's location. The reporters then realize that the archdiocese had been using such euphemisms to refer to other priests, and that the archdiocese had thus left a coded guide of the abuse in its own directories.

A montage sequence ensues of reporters going through directories, climaxing with, of all things, the completion of a spreadsheet.



77	1996	lane	bernard	j	60	sick leave	probable
78							
79							
80							
81							
82	1990	mahan	paul	j	68	unassigned	probable
83	1991	mahan	paul	j	68		probable
84	1992	mahan	paul	j	68		probable
85	1993	mahan	paul	j	68	na	probable
86	1994	mahan	paul	j	68	na	probable
87	1995	mahan	paul	j	68	unassigned	probable
88	1996	mahan	paul	j	68	sick leave	
89							
90							
91							
92							
93	1989	manning	paul	f	67		probable
94	1990	manning	paul	f	67	chapl	probable
95	1991	manning	paul	f	67	chapl	probable

Stills from *Spotlight*

Three of the Pulitzer Prize-winning Boston Globe reporters who actually did the work in real life—Walter Robinson, Michael Rezendes and Sacha Pfeiffer—described it as “three and a half weeks of agony” in a telephone interview. To relieve the tedium on the eyes, they sometimes did the work in pairs, with one reporter reading off from a directory and another person entering the data. But it was worth it. The resulting database was invaluable, they said. The work showed that the individual examples they had heard about were not isolated and showed that there was a larger pattern at work.

These fictional and real journalists made these breakthroughs themselves by investing time and resources into taking little bits of information and aggregating them into something that no single witness would have given to them, making them into the equivalent of smoking guns. Prosecutors and agents can achieve similar results by thinking beyond the witnesses they will interview and investing time and resources into aggregating evidence into powerful tools.

I. Rules and Principles

When analyzing and summarizing evidence, you should keep in mind the evidentiary rules allowing for charts at trial, as well as good design principles that should apply to all charts.

Three evidentiary rules provide “multiple options” for attorneys to “summarize complex evidence and bring it to the jury’s attention in the form of a chart.”¹

The main rule is Federal Rule of Evidence 1006, under which a party “may use a summary, chart, or calculation to prove the content of voluminous

writings, recordings, or photographs that cannot be conveniently examined in court.” Under this rule, the government has admitted many different types of summaries, such as phone summaries showing contacts between co-conspirators, analysis of bank records showing financial transactions, compilations of patient files, and timelines.² When admitting charts under Rule 1006, the government typically calls a witness who was involved in preparing the chart to explain how the chart was created and to establish the chart’s accuracy.³

Another rule is Rule 611(a), which allows a district court to “exercise reasonable control over the mode . . . [of] presenting evidence.” Summaries admitted under Rule 611(a) are typically considered “pedagogic devices” to “clarify and simplify complex testimony or other information and evidence or to assist counsel in the presentation of argument to the court or jury.”⁴

A third rule is Rule 703, which allows an expert to provide the “facts or data” underlying an opinion, which can be presented in the form of a summary chart.⁵

Charts can differ in tone and use based on the rule allowing their introduction. Charts admitted under Rule 1006 are substantive evidence and can go back to a jury for deliberations, and generally should be non-argumentative. Charts allowed under Rule 611(a) or Rule 703 generally may be less neutral in presentation because they are viewed “more akin to argument than evidence.”⁶ Such charts cannot go back to a jury during deliberations.⁷

Moreover, charts’ relationship with the evidence at trial can differ depending on the rules. A chart

are a hybrid of summaries admitted under Rule 1006 and pedagogical device summaries. *See* United States v. Bray, 139 F.3d 1104 (6th Cir. 1998). At least one court has referred to Rule 1006 charts as “secondary evidence” of the materials used to create it. *See, e.g.,* United States v. Draiman, 784 F.2d 248, 256 n. 6 (7th Cir. 1986). The case law is arguably not clear as to what the distinction is between a Rule 1006 chart and a “secondary-evidence” chart, but it may relate to instances when the underlying evidence is both admitted at trial as “primary” evidence and summarized in a separate exhibit that constitutes “secondary” evidence.

⁴ Bray, 139 F.3d at 1111.

⁵ United States v. Janati, 374 F.3d 263, 273 (4th Cir. 2004).

⁶ Milkiewicz, 470 F.3d at 398 (internal citation omitted).

⁷ United States v. White, 737 F.3d 1121, 1136 (7th Cir. 2013).

¹ United States v. Milkiewicz, 470 F.3d 390, 395 (1st Cir. 2006).

² Rule 1006 is typically used to summarize records, but sometimes has been used to summarize testimony that has already been admitted. Courts have generally warned against this practice. *See* United States v. Fullwood, 342 F.3d 409, 414 (5th Cir. 2003) (“we strongly caution, *once again*, against use of summary witnesses in this fashion”).

³ United States v. Fahnbulleh, 752 F.3d 470, 479 (D.C. Cir. 2014) (no error in admitting chart based on testimony by witness who supervised the creation of a summary and reviewed it, even though he did not personally prepare the summary himself), United States v. Shorter, 874 F.3d 969, 978 (7th Cir. 2017) (stating that there is no explicit requirement that a witness testify about a 1006 summary at trial since the proponent of the summary exhibit need only show that the underlying records are accurate and would be admissible). Some courts also refer to ‘secondary-evidence summaries’ that

admitted under Rule 1006 must summarize evidence that is available to the other party and is admissible, but the underlying records need not be admitted themselves. By contrast, a chart admitted under rule 611(a) should be based on evidence that has already been admitted.⁸

Perhaps appropriately, a table may help summarize the law regarding charts:

Rule	Relationship to Trial Evidence	Nature of Chart	Permissible Tone
1006	Summarize voluminous records that must be admissible and can be admitted, but do not need to be admitted ⁹	Substantive evidence, can go to jury during deliberations	Non-argumentative
611(a)	Facilitates presentation and comprehension of evidence already admitted	Demonstrative -cannot go to jury during deliberations	Argumentative
703	Provides facts and data underlying an expert's opinion	Demonstrative -cannot go to jury during deliberations	Argumentative

Law Regarding Charts

Those are the legal rules. However, prosecutors and agents should also consider design principles when thinking about summaries or courtroom presentation, especially given how powerful and common visual summaries have become in regular life.

First, prosecutors should remember that people often learn better when experiencing information in different ways, and that hearing about a fraud is not the same as seeing the fraud for oneself. The Ninth Circuit Jury Trial Improvement Committee noted in 2006 that research had demonstrated that “visual representations can help jurors better understand and

⁸ White, 737 F.3d at 1135.

⁹ Accuracy is obviously important, though perfection is not required. See Milkiewicz, 470 F.3d at 399-400 (errors in the underlying records did not render the summary charts inadmissible, in part because defendant had ample opportunity to expose concerns to the jury).

remember the facts of the case and should be presented in either electronic or printed form.”¹⁰ Similarly, Harvard professor Howard Gardner has advised educators that “[m]astery of a concept or theory requires repeated exposure to that material . . . [b]ut it is a mistake to present the same content in the same way. Understanding is far more likely to be achieved if the student encounters the material in a variety of guises and contexts.”¹¹ Calling witness after witness may be effective, but jurors might learn better if oral testimony is matched with concrete examples and summary charts.

Second, prosecutors should draw upon the lessons imparted by design professionals. Yale professor Edward Tufte has written several excellent books about how data can be summarized via graphs, tables, maps, and other forms of statistical graphics, using real world examples such as how the 1986 Challenger shuttle disaster could have been prevented with a better designed graph. In his book *The Visual Display of Quantitative Information*, he lays out some principles for what good summaries should do: “show the data,” “make large data sets coherent,” “encourage the eye to compare different pieces of data.” Good summaries generally involve “simplicity of design” and “complexity of data.” Other good resources include books by Cole Nussbaumer Knaflic, Nathan Yau, Alberto Cairo and Stephen Few.

Prosecutors and agents can apply these rules and principles in simple yet powerful ways to make their cases.

II. Count Something

Whether you are dealing with bank records, emails, or boxes of documents, simply counting and categorizing key pieces of information can answer important questions and yield powerful evidence. In his book, Better: A Surgeon's Notes on Performance, Dr. Atul Gawande suggested that one way of becoming a better doctor was to count something. “If you count something you find interesting, you will learn something interesting.”¹² This advice can go far in criminal investigations and trials as well.

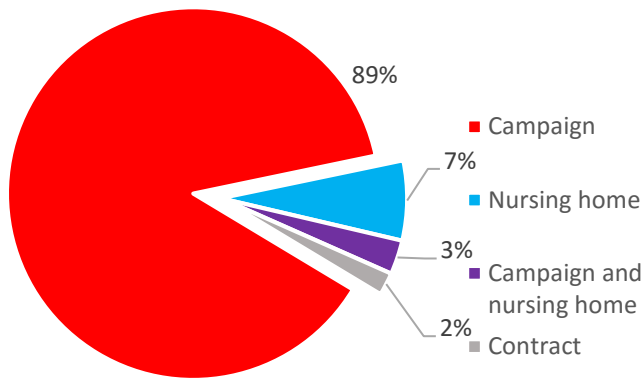
¹⁰ NINTH CIRCUIT JURY TRIAL IMPROVEMENT COMMITTEE, SECOND REPORT: RECOMMENDATIONS AND SUGGESTED BEST PRACTICES, (2006).

¹¹ HOWARD GARDNER, MULTIPLE INTELLIGENCES: NEW HORIZONS 60 (Basic Books, 2006).

¹² ATUL GAWANDE, BETTER: A SURGEON'S NOTES ON PERFORMANCE (2007).

This was highlighted by a New York Times reporter when reporting on the 2014 trial of former Connecticut Governor John Rowland in the District of Connecticut. In describing the evidence that led to the jury’s guilty verdicts, the reporter described the government’s summary witness as providing “several powerful punches,” simply by categorizing emails and phone records and counting them up.

An issue at trial had been Rowland’s contract with a nursing home owned by a cooperating codefendant—was it a legitimate contract for services, or was it really a way to disguise campaign work? The summary witness, who was a retired postal inspector, simply counted all the emails and found that the vast majority related to campaign business and that only a small number related to the nursing home’s business. A re-creation of the chart is below:



Rowland Emails by Percentage of Files Re Campaign, Nursing Home, Contract

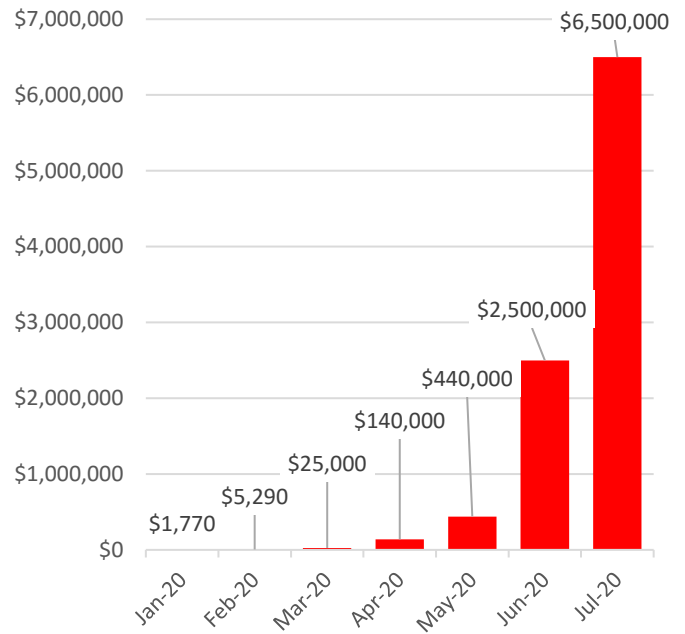
This kind of basic analysis can reveal what defendants are talking about and how often they are communicating. This kind of analysis can also answer important questions in fraud cases, such as where the money is coming from and going to.

For example, in Ponzi scheme cases, analysis of the bank records typically will reveal some common traits: (1) money coming in primarily from new investors, (2) little money actually going out for the kinds of investments that the fraudster had promised, and (3) some kind of disconnect showing how the enterprise’s obligations far outstrip the enterprise’s actual assets or funds.

¹³ These numbers are based on reporting done by Mitchell Zuckoff in *PONZI’S SCHEME: THE TRUE STORY OF A FINANCIAL LEGEND* (2005).

That is what happened with Charles Ponzi himself. Ponzi told investors in early 1920 that he could use their money to make huge profits using “international reply coupons” that could be bought at low rates in some countries and worth more in others. He promised fifty percent returns in just months.

The graph below summarizes the amount of money that Ponzi was able to collect from people in 1920 as his scheme suddenly grew. The scheme started off small, but grew rapidly before suddenly collapsing in the summer of 1920.¹³



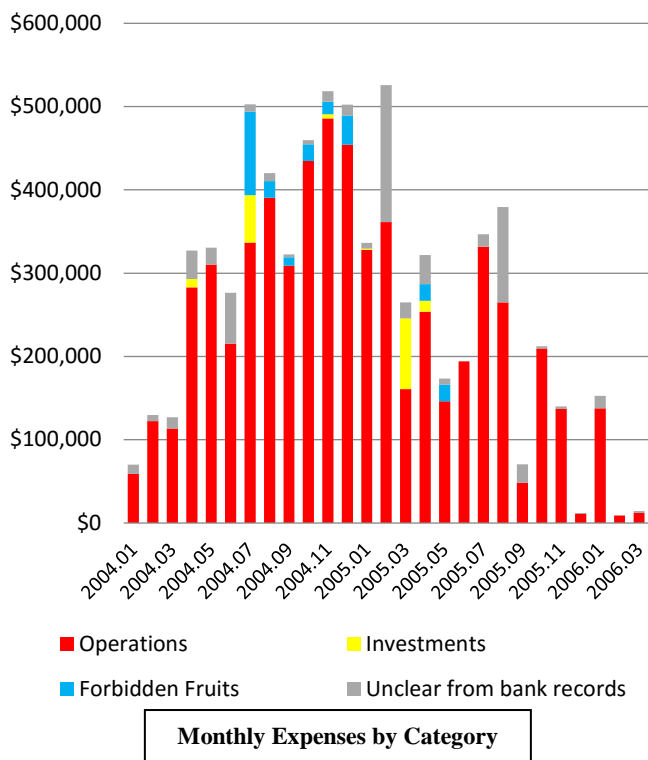
New Investments With Ponzi By Month

Had Ponzi been just a bad businessman rather than a fraudster, then there should have been expenses showing that he was actually implementing the business model that he had been pitching. There were not. The money that Ponzi collected went to hire more people to solicit more investors, to pay down debts, and to enjoy and show the wealth that made him look successful—suits for himself and jewels for his wife, a custom made limousine, and a seven-bedroom house. Ponzi claimed to have given some of the money to a man who went to Italy to buy the international reply coupons necessary for his model to work, but there appears to be no evidence that this man actually existed.¹⁴

¹⁴ Ponzi pled guilty to federal charges and was sentenced to five years’ imprisonment. He then stood trial on state charges while

Counting the money can be a big part of going after Ponzi's successors. Most money will go to maintaining or expanding the scheme (the employees that Ponzi hired and branches he opened to solicit more investors) and for the fraudster's own benefit, and little, if any, will actually be used to do what the fraudster has claimed to be doing.

For example, the graph below was used in a trial to help show that a defendant was lying when he told victims that he would use the equity from their homes for undisclosed investments that would enable him to pay off their thirty year mortgages in just five years while reducing their current mortgage payments significantly.¹⁵ The red portions represented the money that went to keeping the scheme going (mostly payments related to earlier victims), and the blue and yellow portions represented the few investments that he and his partners actually made.



Health care fraud cases also can benefit significantly from simply counting something that seems odd. People committing healthcare fraud typically have gotten very good at papering their files to fool an auditor who is looking only at a few randomly selected claims in isolation. But if you step back and

serve his federal sentence. During the trial, he claimed that he had destroyed all correspondence with his man in Europe, and ultimately was acquitted. A second trial on other charges ended

look at the files overall, that may reveal some kind of ridiculous pattern that will be powerful evidence of the overall fraud.

One common type of healthcare fraud involves doctors billing routine patient visits as if the visits were more complicated than they actually were. Complicated visits should typically take more time, and the American Medical Association includes typical times for each billing level. Adding up the number of visits in a day and multiplying them by the associated time can yield powerful evidence of fraud, especially when the totals become particularly ridiculous, such as the doctors who regularly bill more than twenty-four hours' worth of visits in a single day.

Another type of healthcare fraud involves doctors providing cosmetic light treatments to their patients but billing insurance companies as if they were destroying large numbers of precancerous lesions. To prove this fraud in a case in the Northern District of Illinois, the government took the defendant's files, put them in chronological order, and counted the number of lesions allegedly destroyed each time. The numbers added up and became hard to believe. Maybe a woman in her thirties could have had 119 precancerous lesions destroyed on her face in November 2006 and somehow did not remember being told about this condition. However, that is harder to accept when all the procedures are added up. In total, the defendant and his staff created files indicating that this woman had 2,456 lesions destroyed just on her face over the course of seven years.¹⁶

The defendant's files had been designed to beat an audit, and the large number of lesions that he claimed to destroy each time made the patients look sicker than they actually were and made the treatments appear necessary, thus helping to conceal the fraud. However, those same numbers, when summed up, became powerful evidence of the fraud and helped simplify a case that might have appeared complex at first glance.

Look for something weird or untrue or inconsistent in the files and data, and you can turn it into something powerful at trial.

with a hung jury, and Ponzi was finally convicted by a jury after the third trial in 1925.

¹⁵ United States v. Felix Daniel, 11 CR 743 (N.D. Illinois).

¹⁶ United States v. Robert Kolbusz, 12 CR 782 (N.D. Illinois).

III. Track Something

You can also use summaries to track particular facts and pieces of evidence and to highlight patterns via repetition.

First, tracking something can create powerful evidence that would not be obvious or compelling if presented solely via oral testimony, especially when you track something that no one thought to lie about at the time.

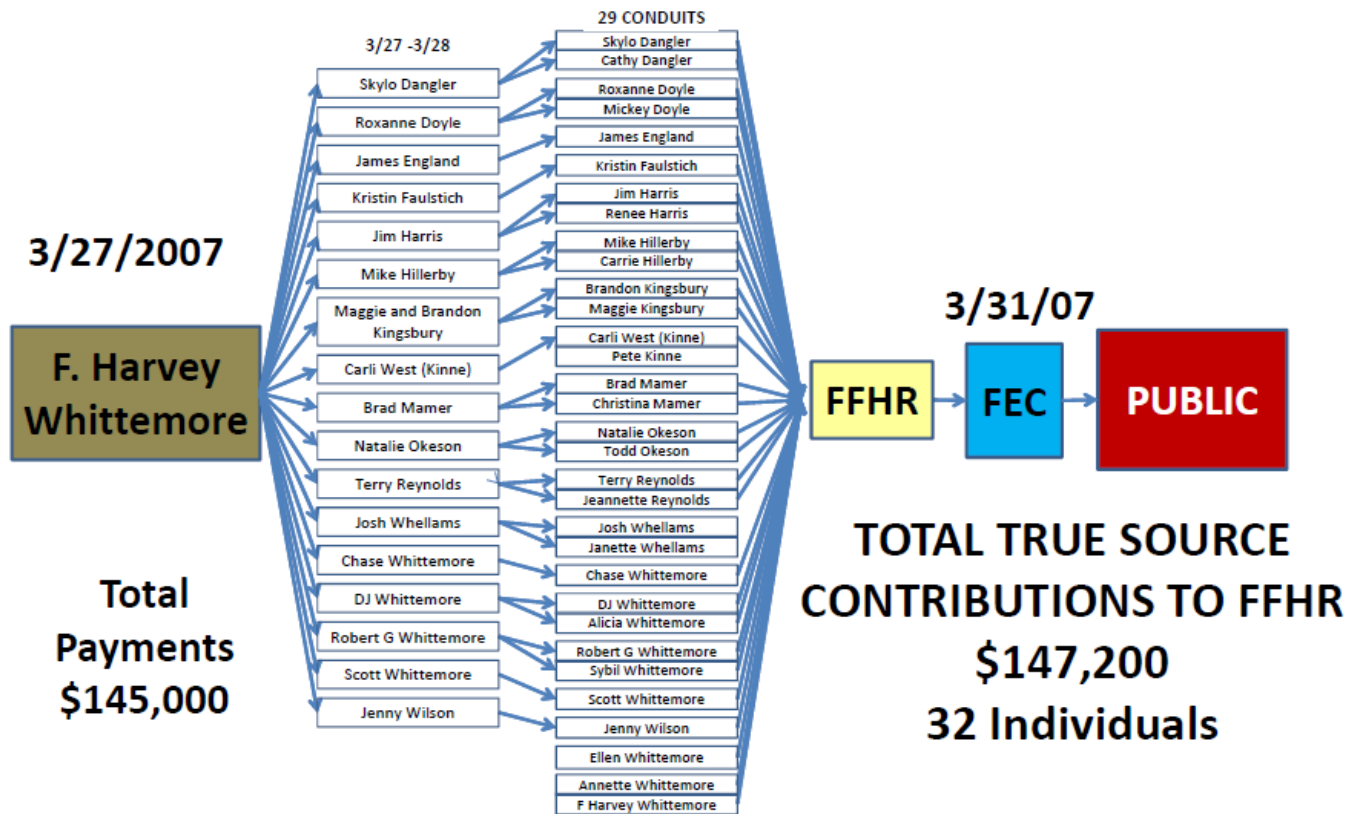
HR-related records can be particularly helpful, such as the directories mentioned in the *Spotlight* example above. Bonuses that continued and grew over the course of a fraud scheme can help show that a defendant was more involved and knew more than she might claim. Also, payroll records can help show that a defendant was the only person who could have committed a particular crime.

In one case in the 1990s, postal investigators identified a postal supervisor who was stealing cash in part by determining that the supervisor was the only person who worked on each day that the thefts

occurred. They also determined that the thefts started after he began working at that office and stopped after he was questioned by investigators. At trial, they showed this in part through an exhibit that simply compared payroll records with the dates of each theft.¹⁷

Second, tracking something in detail can prove that the defendant did not simply make an isolated mistake or was negligent, but was engaged in deliberate conduct that is strong evidence of intent. In the James Bond novel *Goldfinger*, Bond tries to talk his way out of a dangerous situation, but the villain has none of it. One time is happenstance and twice is coincidence, Goldfinger says, but the third time is enemy action. Similarly, one time may be an accident or mistake, two or three times may be negligence or sloppiness, but time after time is a scheme.

For example, in a campaign finance case, the defendant funneled money through multiple intermediaries to the ultimate recipient. The government used charts to show that each



United States v. Whittemore Exhibit

¹⁷ United States v. Weaver, 281 F.3d 228 (D.C. Cir 2002). I also interviewed retired Postal Inspector Rory Pankhurst about the case on June 14, 2017.

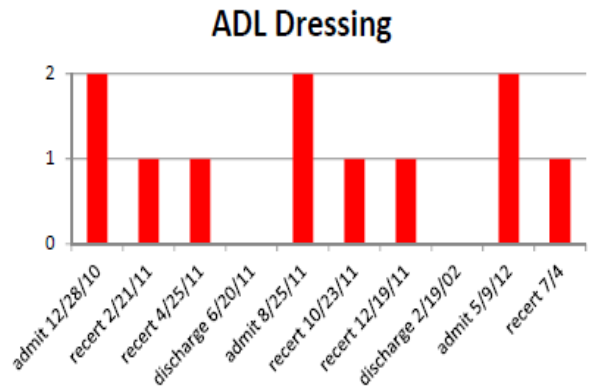
intermediary’s contribution followed the same pattern. On one day alone, the defendant transferred \$145,000 to seventeen relatives and employees that were characterized as “bonuses” or “gifts” and simultaneously encouraged them to make contributions, sometimes explicitly saying that the money was intended to cover the cost of the contribution. At trial, the government introduced charts showing each step being repeated over and over again, a powerful depiction of the defendant’s conduct and intent.¹⁸

Similarly, in health care fraud cases, one way that schemes try to make it look like they are providing medically necessary services is by occasionally discharging patients and then re-admitting them.

This can help fool auditors and can yield more proceeds in the long run. Summary charts showing the discharge and subsequent re-admissions can show patterns that undercut medical necessity and show criminal intent. For example, in one trial involving a doctor who had improperly certified patients for home-health services for years, the government used charts to show that the doctor regularly discharged patients and then re-admitted them even though there had been no change in the patient’s condition. This pattern made no sense except as part of a fraud scheme, and thus showed that the services were not medically necessary, and that the defendant’s actions were not merely occasional mistakes or inconsistencies.¹⁹

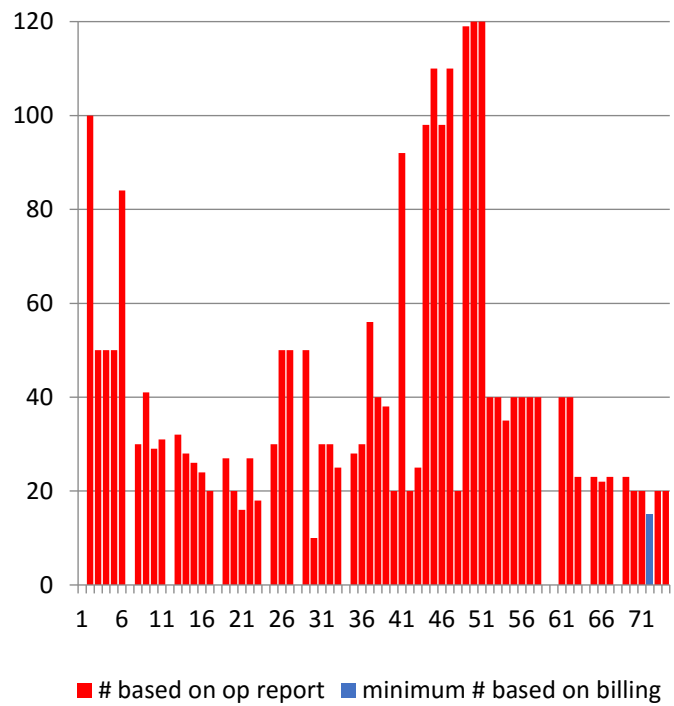
Similarly, in a case involving a nurse who lied about patients in order to bill Medicare for unnecessary home-health services, charts proved useful in proving the fraud. The chart to the left shows how the nurse lied at key times about the patient’s condition, claiming that the patient could not dress himself every time that he was admitted or re-admitted. The patient may not be able to remember what his condition was on August 25, 2011, but he can remember that his ability to dress himself was not going up and down and up and down.

¹⁸ United States v. Whittemore, 12 CR 68 (D. Nevada).



Fooling Auditors through Discharge and Re-Admittance

Third, tracking something over time can reveal key moments that can corroborate witness testimony or show the defendant’s intent. In the dermatologist case mentioned above, the total numbers of lesions allegedly destroyed were virtually impossible to believe in some cases. However, a closer look at how the numbers changed over time was also significant. One large insurance company started to catch on in 2006. Suddenly, the number of lesions that the defendant was supposedly destroying each time dropped from 120 to less unreasonable numbers. The number dropped again in the summer of 2007, soon after a peer warned the dermatologist that what he was doing looked like fraud.



Number of AK Lesions Allegedly Destroyed Per Service

¹⁹ United States v. Koroma, 13 CR 685-2 (N.D. Illinois).

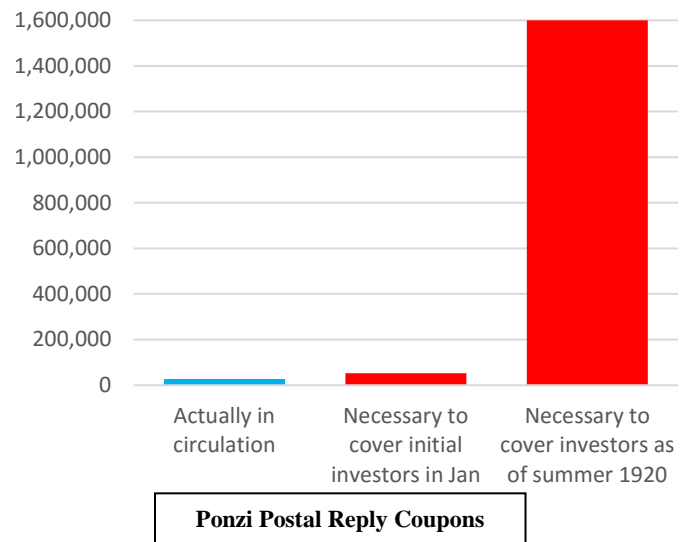
Fourth, tracking disparate items with Rule 1006 summaries can help jurors see how evidence from different sources fits together and can save you time in your closing arguments. When evidence comes in at trial through multiple sources and out of chronological order, a simple timeline can help the jurors understand the materials better while you are still presenting the case. This can help them see the points you are trying to make, rather than leaving them in confusion until closing arguments. For example, the timeline below was used in a Western District of Missouri case involving multiple vehicles that were stolen and later recovered.²⁰ Timelines like this one helped show what happened to a particular vehicle, something that may have gotten lost otherwise.

IV. Contrast Something

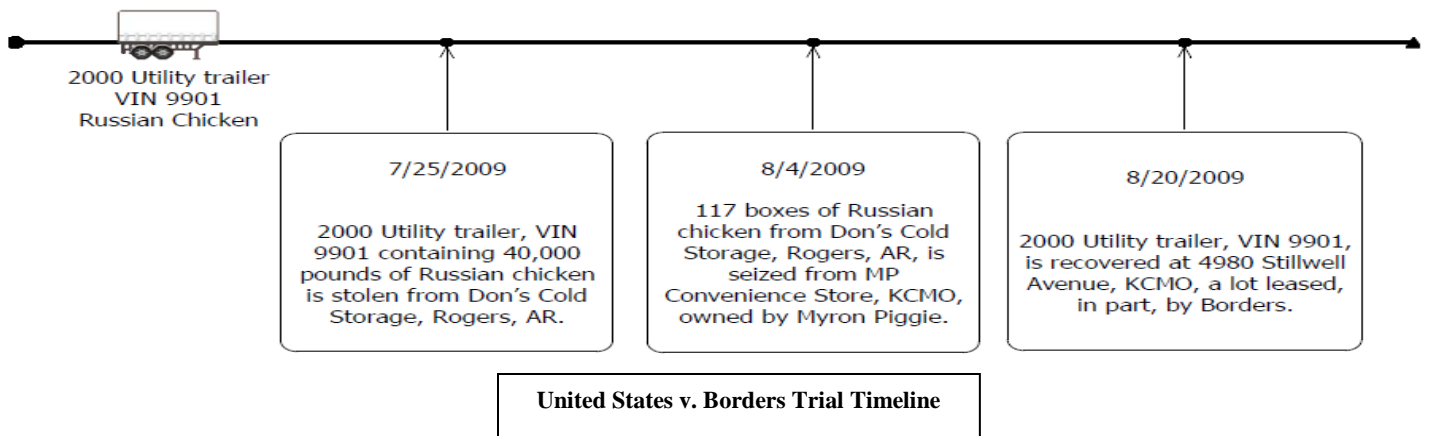
You can also use summaries to contrast the defendant’s own statements or conduct against something else—typically, reality. Fraud cases often are about defendants making their victims (investors, clients, Medicare) believe that defendants are doing one thing when the reality is otherwise. They create a fake world that appears legitimate from the inside. Documentary evidence and summary charts can help jurors step out of the fake world and see the reality for themselves.

In Ponzi scheme cases, there probably will be a huge contrast between what the defendant says he is doing and what he actually is doing. Charles Ponzi told people that he was arbitraging postal reply coupons, but there were not enough coupons in circulation to make all the money that Ponzi was promising, and Ponzi was not actually buying large quantities of

coupons as he would have had to if he really meant what he was saying.²¹ The chart below visualizes this.



Similarly, when forensic accountant Bruce Dubinsky tried to show that Bernie Madoff was running a Ponzi scheme, there was a contrast between the stock purchases shown in Madoff’s customer ledgers and the stock purchases that actually occurred. Dubinsky found that ledgers reported purchases on particular days that were in greater volume than had occurred in the entire stock market, and he found that ledgers reported purchases at prices that were lower than all the reported prices in the entire stock market.



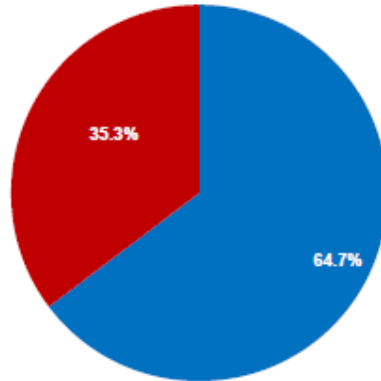
²⁰ United States v. Borders, 12 CR 386 (W.D. Missouri). Thanks to AUSAs Gregg Coonrod and Cindi Woolery for their help.

²¹ MITCHELL ZUCHOFF, PONZI’S SCHEME: THE TRUE STORY OF A FINANCIAL LEGEND (2005).

Evidence that trading did not occur in the IA Business:

Summary of out of range purported stock trades

- There were 496 unique stock transactions that were outside the daily market price range between January 2000 and November 2008.
 - 321 of these transactions, or 64.7%, were sold above the market price.
 - 175 of these transactions, or 35.3%, were purchased below the market price.

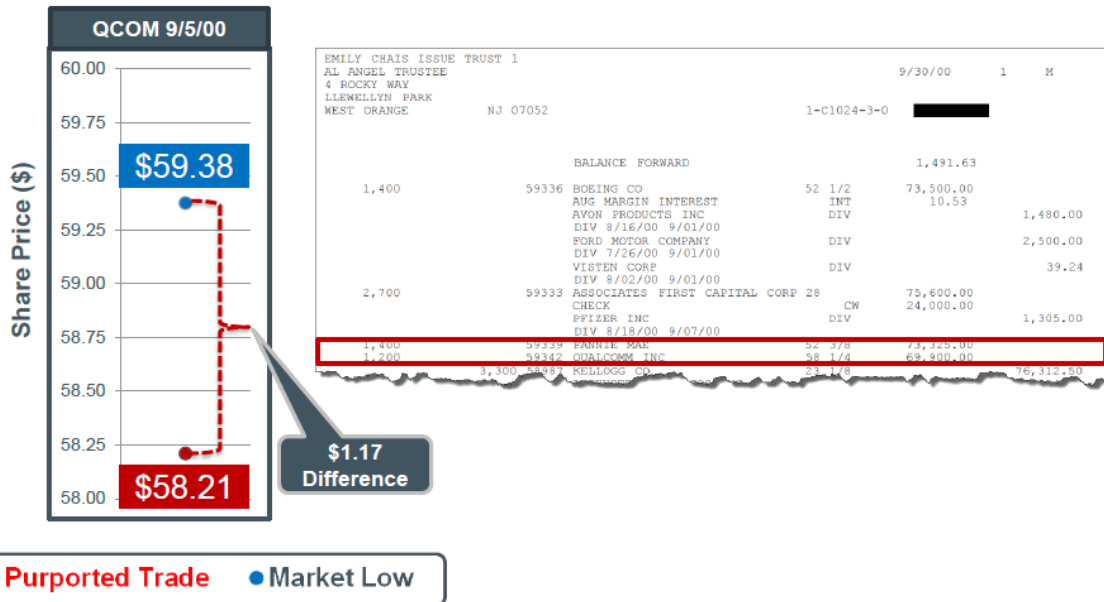


■ Above the Market Price ■ Below the Market Price

Madoff Slide 1

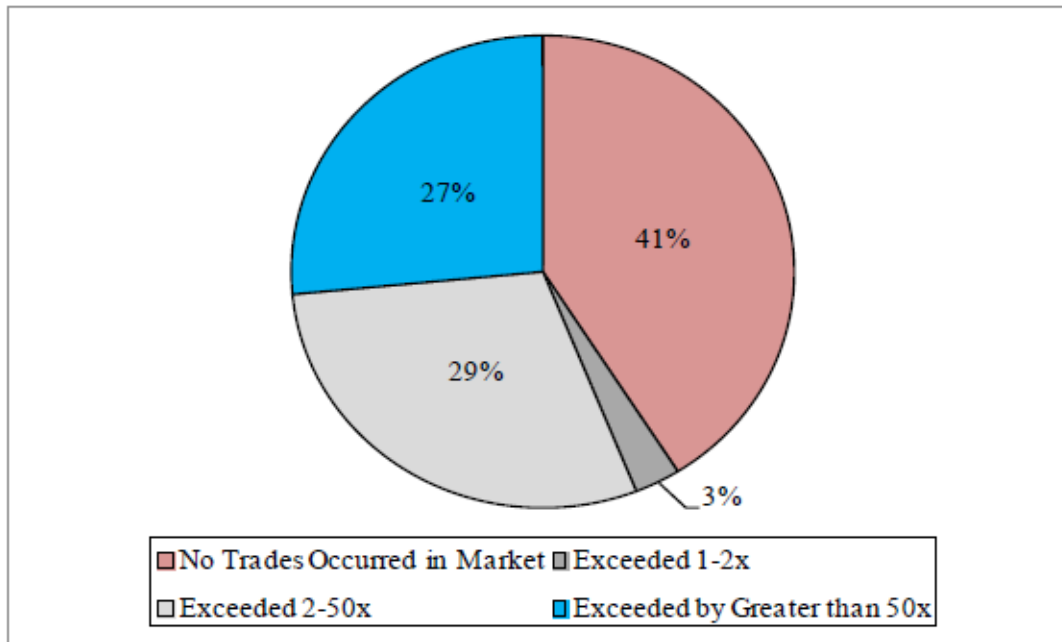
Evidence that trading did not occur in the IA Business:

Madoff purportedly bought stocks at a lower price than was available



Madoff Slide 2

Evidence that trading did not occur in the IA Business: Volume Analysis - Convertible Arbitrage Monthly Analysis ¹



¹ 94% (407/432) of unique convertible securities transactions that were purportedly executed exceeded the daily market volume.

Madoff Slide 3

Evidence that trading did not occur in the IA Business: Convertible Arbitrage example of a security that did not trade even though reflected on customer statement

Customer Ledger

5/30/80		AVELLINO & BIENES 285 MADISON AVENUE NEW YORK NY 10017		1-00121-1-0		1	
5/22	5/22	CHECK		PAID		70,000.00	
5/23	5/23	CHECK		PYMT	10,586.20		
5/19	5/27	3594	1 COOPER INDS INC	112	1/2	404,325.00	
5/21	5/21	13220	PFD SER B CONV \$2.50				
5/27	5/27	9518	TIME INC				
5/27	5/27		PFD SER B CONV \$1.575				
5/27	5/27		TIME INC				

Long purchase of preferred convertible stock - 3,594 shares

Trade Date: May 19, 1980

Daily Stock Price Record: NYSE
Q2 1980

CONWOOD CORP COM				COOK UTD INC COM				COOPER INDS INC COM				COOPER INDS INC PFD B CV \$2.50				COOPER INDS INC PFD CONV \$2.90				
TICKER SYMBOL	THOUS SH OUTSTANDING	CMD	CLOSE	TICKER SYMBOL	THOUS SH OUTSTANDING	CMD	CLOSE	TICKER SYMBOL	THOUS SH OUTSTANDING	CMD	CLOSE	TICKER SYMBOL	THOUS SH OUTSTANDING	CMD	CLOSE	TICKER SYMBOL	THOUS SH OUTSTANDING	CMD	CLOSE	
12	7	28-4 1/2	28-3	28-3	3500	6-1	6-7	6	28 3/4	30-2	29-6	30	10215	215	220	310	34-4	34	34-4	
13	5	28-5	28-4	28-4	TS	6	6-7	6	604	30-2	29-6	30		215	215	170	35	34-5	35	
14	4	29	28-5	29	291	6-1	5-6	6	6850	30-2	29-6	30-3		215	220	417	34-6	34-2	34-2	
15	2	29-2	29-2	29-2	117	6	5-6	5-6				30		0205		154	35	34-4	35	
16	7	29-6	29-4	29-5	114	6-7	5-5	5-5				30-4				1052	4715	36-7	36-7	
17	25	30	30	30	112	6-7	5-5	5-5				31				0210	220	35	35	
18	30	30	30	30	57	6-7	5-5	5-5				31-4				220	220	163	35-3	35-3

No volume traded that day

Madoff Slide 4

Dubinsky’s slides were admitted at the trial of some of Madoff’s associates via his role as an expert, but many of them probably could have been admitted under Rule 1006. Dubinsky testified at trial that he spent days going through thousands of banker boxes of Madoff documents that were housed in a warehouse on Long Island, and his work summarized the review of those and other voluminous records.²²

Contrasting lies with reality can work in prosecuting other types of fraud. In the late 1990s and early 2000s, a defendant conspired with a courthouse procurement officer to rig bids and to overcharge the court. To prove the fraud, the government used multiple summary charts, including one that juxtaposed; (1) what the defendant actually purchased from his vendors, based on a summary of roughly 1,300 pages of records, and (2) what the defendant actually billed to the district court. A re-creation of a portion of this chart is below.²³

Court Invoice			Vendor Invoice		
Date	Qty	Price	Date	Qty	Price
10/9	400 cartons of paper	\$36.95 per carton	10/17	300 cartons of paper	\$23.50 per carton

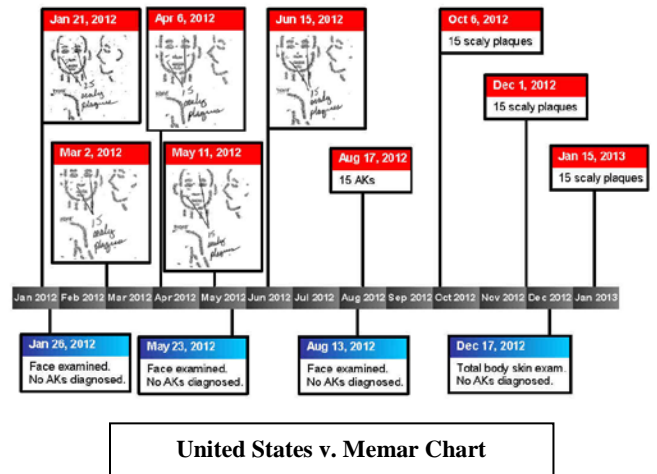
Example Chart Proving Fraud

Rather than making the jury compare huge amounts of records, the chart did the work for the jury. With the chart, the jury can more easily see that the district court had paid for 100 more cartons of paper than the defendant himself could have delivered in October 2001.

In health care fraud cases, the records and data of legitimate providers can also provide strong contrasts with a defendant’s fraud. For example, in home health cases, nursing agencies and doctors often claim that patients are “confined to the home” for extended periods of time. The agencies and doctors can submit claims making the patients appear that sick, but the files and data created by patients’ other providers can show that the patients were leaving their homes during the same time periods and were in stable condition.

²² United States v. Bonventre *et al.* (10 CR 228) (S.D. New York).

In another case involving cosmetic light treatments being billed as the destruction of precancerous lesions, the government learned that one patient had gotten such treatments at the same time as she was seeing another dermatologist. The government contrasted the two doctors’ records in a timeline that was admitted under Rule 1006 and that showed that the patient received nine such treatments over a year in which the other doctor found no such lesions.²⁴



This chart accomplishes several things. First, it shows that this patient got multiple treatments in which the defendant’s staff claimed to have destroyed large numbers of “scaly plaques” that were diagnosed as actinic keratosis lesions, even though the defendant himself never examined the patient during this entire period. Second, it shows that the patient was seen by another dermatologist multiple times during the same period, and that the other dermatologist never diagnosed any such lesions. This contrast helped show that the patient did not actually have the lesions that defendant claimed to have destroyed.

V. Practice Pointers

Creating a good summary is like developing a good witness. It takes time and preparation, it can be tedious and sometimes painful, and it can pay off.

Here are some pointers for creating good, effective summaries for trial:

- *Think of questions that data and documents might be able to answer.* Can the data corroborate a witness’s account of how the scheme worked? Can data from the defendant or someone else

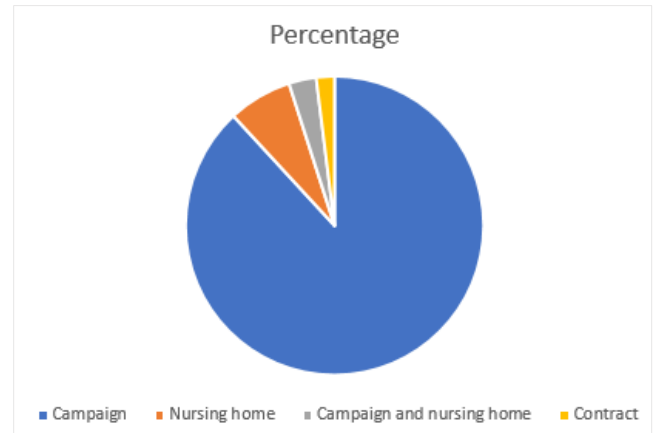
²³ United States v. Milkiewicz, 470 F.3d 390, 395 (1st Cir. 2006).

²⁴ United States v. Memar, 15 CR 345 (N.D. Illinois).

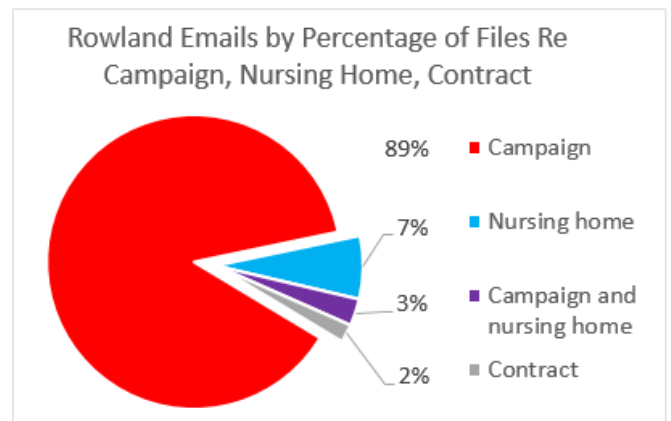
contradict the defendant’s statements or promises? Can the data tell you when a scheme peaked or collapsed, suggesting turning points that can be useful to explain at trial? Are there flaws in the data or documents that can show the larger scheme (e.g., a defendant who is automatically billing for services not actually rendered will be revealed by occasional “mistakes,” such as billing for visits performed on patients who were actually dead or out of town).

- *Build a database based on a targeted review of voluminous records.* Find a few things to track or add up, and start recording the data in a spreadsheet or table. Create a template for the investigative team to use, test it out, track something, and collect the results in a table or spreadsheet.
- *Start counting, tracking or contrasting something with draft charts.* Some useful computer programs that you can use are Microsoft Excel or Microsoft PowerPoint for charts, tables or graphs, or Lexis TimeMap or PowerPoint for timelines (you can always use paper as well!). If you need help setting up formulas, meet with a financial analyst and explain the kinds of things you are trying to do (your office’s fiscal or accounting people generally should be familiar with Excel and might be able to help out as well). Your initial drafts may not work out, or may reveal data that is helpful but not clear enough to be worth using at trial. Step back and think of another way to look at the data from your database. Go back and track something else if necessary.
- *Make the charts clear and legible for a general audience.* Trials typically are not the place for complicated graphics based on complex formulas or for logarithmic scale. Make charts that convey a lot of information while being based on simple principles that a jury will be able to follow, and make sure the charts are legible to jurors looking at them from some distance. I generally make charts first in Microsoft Excel in order to take advantage of Excel’s formulas and its abilities to sort and filter data, and then copy the chart over to PowerPoint where I can have more control over how the charts will look on the screen or when printed out. I also use the computer software to make initial design choices but then

modify many elements myself, such as changing colors in a graph to highlight the most significant data. The first chart below shows the way that Excel created the Rowland chart shown on page 38, and the second chart shows how I changed it for presentation purposes. I revised the title, changed the colors (red for the most damning, blue for the legitimate emails, purple for the mixed emails, and grey for neutral emails), moved the legend to the right, added the data labels, and moved them to fit the legend.



Example of Auto-Formatting by Microsoft Excel



Same Chart Reformatted for Presentation Purposes

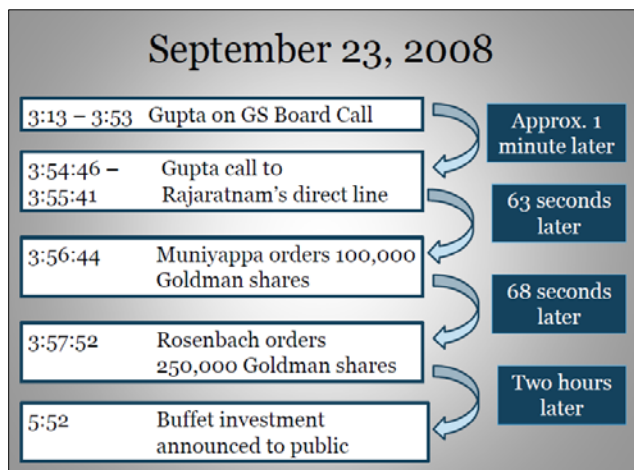
I use the TimeMap program to create timelines, but I manually tweak the timelines to highlight the points that I know matter, even if the computer does not. For example, the timeline comparing two doctors’ records below was designed so that the defendant’s claims were above the timescale and any actual examinations were below, making the contrast more obvious.

- *Keep in mind the distinction between Rule 1006 charts and what you can use at closing.* A chart that is admitted under Rule 1006 should be non-argumentative, should be based on largely if not entirely undisputed information, and should not draw any inferences on its face. At closing, you can use a more argumentative version. In the insider-trading trial of Rajat Gupta in the Southern District of New York, a relatively simple chart (the first below) summarized some of the communications between the defendant and the person he tipped off regarding a soon-to-be hot stock on a particular date. This put the evidence before the jury in a simple, non-objectionable way and set up a more compelling visual for closing arguments (the second image below).

Certain Communications September 21, 2008 - September 24, 2008					
9/23/08	9:45 am	Galleon	McKinsey CT Office (Gupta Direct Line)	14 minutes	603
9/23/08	9:47 am	McKinsey CT Office (Gupta Direct Line)	Gupta Cell Phone	13 minutes	
9/23/08	3:13 pm	McKinsey CT Office (Gupta Assistant Line)	Goldman Sachs	Total Duration= 41 Minutes 12 Seconds	604, 616, 619
9/23/08	3:13 pm	McKinsey NY Office (Room 2704)	Goldman Sachs		
9/23/08	3:54 pm	McKinsey CT Office (Gupta Assistant Line)	Rajaratnam Direct Work Line	Total Duration= 56 seconds	604, 616, 619, 628
9/23/08	3:55 pm	McKinsey NY Office (Room 2704)*	Rajaratnam Direct Work Line		
9/23/08	6:15 pm	Gupta Cell Phone	Rajaratnam Direct Work Line	1 minute	601
9/23/08	6:16 pm	Gupta Cell Phone	Rajaratnam Cell Phone		625, 601
9/23/08	6:16 pm	Gupta Cell Phone	Rajaratnam Assistant Line	1 minute	601

*Duration for McKinsey NY Office (Room 2704) to Rajaratnam Direct Work Line is 30 to 35 seconds

Communication Timeline 1



Communication Timeline 2

- *Think about how you are going to admit the charts at trial.* I often will draft charts myself for trial to see what is effective, and then ask an agent or an investigator to redo or verify the work themselves. Consider having the witness go through some specific examples before showing the final summary—this can help establish the credibility of the summary and minimize confusing cross-examination. Show your work.
- *Think about when you are going to admit your summaries at trial.* Data can corroborate insiders when they describe a scheme, but consider flipping this around. If the summarized data goes in first, then the jury might actually understand the scheme better and have better context for the witnesses' testimony. In health care fraud cases, presenting the defendant's own files to highlight implausible patterns may be a great way to start the trial. This can leave jurors with doubts about the defendant's practice and sets up the testimony of witnesses whose testimony might otherwise be confusing or out of context.
- *Consider ways to ensure that your charts get admitted at trial.* Provide the underlying materials to defense counsel as part of discovery, and provide some charts to defense counsel as early as possible, even if they are in draft form. Consider providing the underlying spreadsheets with the formulas used to create the charts. This is by no means required, but can avoid issues that might endanger admission at trial.²⁵ Consider offering to meet with defense counsel to explain any methodologies ahead of trial. Also, consider filing motions with draft charts ahead of trial to avoid last minute problems.
- *Finally, do not wait until trial to start thinking about what summaries might be useful.* If you wait until trial to make your summary charts, you may never get to trial. Taking the time to do a summary chart during the investigative phase unfolds can open new leads and new questions that can shape your case and even accelerate an investigation. Summary charts can corroborate witnesses and can help convince defendants to plead guilty. Embracing this kind of approach

²⁵ See *United States v. Lewis*, 594 F.3d 1270 (10th Cir. 2010) (government was not required to produce a database compiling more than twelve boxes of bank records as long as the records

were available, but noting that providing access to the database may make it easier for the other party to check the accuracy of any summary).

early on can help you simplify and transform your cases.

Good luck!

Stephen Chahn Lee has been an Assistant United States Attorney in the Northern District of Illinois since 2008, most recently serving as senior counsel in his office's health-care fraud unit. Before becoming an AUSA, he was an associate at Debevoise & Plimpton LLP and a reporter for the Chicago Tribune. He is a graduate of Yale College and Columbia Law School.

Lessons for Trials from Cognitive Research

Think about a criminal trial as a learning experience, and think about how it differs from most of the learning experiences that people encounter in their lives.

- The audience has to learn the material one source after another, rather than by topic or theme, and may hear attacks on a source’s credibility without hearing about corroborating information until much later.
- The audience has to learn the material primarily by listening, rather than by getting to read some material beforehand or by getting to figure out what works best for them.
- The audience usually is not allowed to raise their hands and ask questions of the speakers.
- The audience is not allowed to discuss the material until the presentation of material is completely done, and is not allowed to ask for any additional material once they begin processing the materials for themselves.
- The audience is told to make a decision based on the material they have heard often without being told information that most people would like to know in their normal course of life (such as the defendant’s version of events) and without the opportunity to ask for more information about how they should evaluate the material (no explanation allowed for “beyond a reasonable doubt”).

Overall, because of evidentiary rules and constitutional principles, a trial is a learning experience that is very different from what people have experienced through most of their lives. Nonetheless, there has been much research in recent years about how people learn and think. Understanding this cognitive research can allow prosecutors and agents to help jurors learn and

understand their cases better and lead to better results overall.

I. Less is More

Imagine two cups of ice cream. One cup (cup A) holds exactly as much ice cream as will fit into the cup. The other cup (cup B) has less total ice cream, but is smaller and the ice cream appears to be overflowing. Ultimately, you should want cup A more because it has more ice cream. However, in a study published by Christopher Hsee of the University of Chicago, when participants had to evaluate the ice creams separately, participants were willing to pay more for cup B (\$2.23) than for cup A (\$1.80).¹ Expectations matter.

Now imagine two sets of dinnerware. Both sets (set A and set B) start off with the same amount of plates and bowls in good condition. One set (set B) also has some cups in good condition and some cups that are broken. You should still want set B more than set A. However, people in Hsee’s study were willing to pay more for set A than set B when they were evaluating the sets separately (\$32.69 for set A and \$23.25 for set B). The bad cups bring down the overall evaluation of the set.

When evaluating items, people sometimes make bad judgments based on improper expectations (the ice cream example) and based on averages rather than totals (the dinnerware example). People can do the same with good evidence that fails to meet overly high expectations or that is tainted by evidence that is noticeably weaker.

At trial, do not weaken strong evidence by putting in unnecessary evidence that is merely helpful. If your defendant committed one crime that is really clear and another crime that is less clear, just charge the first. If the evidence came in strong for five counts but weaker for the sixth count, consider dismissing the weak count before closing arguments so that you don’t risk weakening the jury’s evaluation of all the counts. If you have five really strong witnesses and one witness who is helpful but comes with a lot of baggage, consider dropping that witness.

LESS IS MORE

¹ Christopher Hsee, *Less Is Better: When Low-Value Options Are Valued More Highly than High-Value Options*, JOURNAL OF BEHAVIORAL DECISION MAKING, Vol. 11, 107-21 (1998).

II. The Anchoring Effect

Imagine rolling dice or spinning a wheel before making a decision. Even when you know that the results of that roll or spin are completely random, research has found that those numbers can influence the subsequent decision. In one study, legal experts in Germany who were asked to sentence a thief after rolling dice gave higher sentences if the roll was higher (mean of 7.81 months) and lower sentences if the roll was lower (5.28 mean).² In another study, students who spun a wheel before estimating the number of African countries in the United Nations gave different answers based on that spin (25% for low spins and 45% for high spins).³

Be careful how you ask questions about numbers and dates, and make sure that your witnesses are not improperly “anchored” before being asked a question. If you ask a witness about one date in particular, make sure you re-anchor the witness before asking about another time. Ask good foundational questions and be mindful of any potential anchors that could throw off the witness or confuse the jury.

III. Dealing with the Forgetting Curve

Think about cramming for a final examination in a class. You may do well on the test the next day, but probably can recall very little a few days later. This is a common experience of what has been called the “forgetting curve,” how people’s retention of material fades over time. People start to forget things soon after they have heard or read them, but reinforcing the material just as people are starting to forget can help retention.

As described in the book *Make It Stick: The Science of Successful Learning*,⁴ one way to prevent forgetting is to space out the material over time and to present the material in different contexts, something called “distributive learning” or the “spacing effect.”

If you have a long trial involving multiple topics, keep the forgetting curve in mind as you decide the order of your witnesses. If you have multiple witnesses who make a similar point, you may want

to space them out, so the subsequent witnesses will help reinforce the earlier testimony that jurors may be starting to forget, rather than grouping them all together and having a great risk that the jurors forget everything. Look for opportunities to space the presentation of evidence to maximize retention. If you have good emails, consider breaking them up into reasonable batches, rather than simply presenting them all at once. If you have a witness who remembers the events memorialized in an email, consider having the witness testify about the event and using the email later in the trial to remind the jurors of the earlier testimony.

The authors of *Make It Stick* also argue that people learn better and retain more by quizzing themselves about material soon after learning it, compared to repetitions of the material. People do better on a final examination if they take quizzes throughout the class and as they study, rather than simply taking one examination.

Quizzes obviously do not fit well with the trial process, but some judges are experimenting with ways that effectively would introduce some of this concept. Some are giving jury instructions at the start of a case so jurors can better understand what they will have to decide later and perhaps quiz themselves as the trial progresses. Consider asking for such instructions, and consider asking jurors in opening statements to keep those instructions in mind as they hear the evidence.

IV. WYSIATI

For further reading, there are many good resources out there looking at how people think. One in particular is *Thinking, Fast and Slow* by Nobel Prize winning economist Daniel Kahneman, who was also one of the subjects of Michael Lewis’s *The Undoing Project*. In his book, Kahneman describes how people think using two different systems—System 1, which makes automatic, intuitive judgments, and System 2, which makes more effortful judgments—and how the conflict between the systems can lead to errors.

² Birte English, Thomas Mussweiler, Fritz Strack, *Playing Dice with Criminal Sentences: The Influence of Irrelevant Anchors on Experts’ Judicial Decision Making*, PERSONALITY AND SOCIAL PSYCHOLOGY BULLETIN, Vol. 32, No. 2 (2006).

³ This study is discussed in Daniel Kahneman, THINKING, FAST AND SLOW (2011).

⁴ PETER BROWN, MARK MCDANIEL, AND HENRY ROEDIGER, MAKE IT STICK: THE SCIENCE OF SUCCESSFUL LEARNING (2014).

In particular, Kahneman advises people to avoid believing WYSIATI, a term for “WHAT YOU SEE IS ALL THERE IS.”

Kahneman warns that System 1 can lead to judgments based on limited information, when you believe that what you see is all there is (the basis for the heading of this section). According to Kahneman, WYSIATI explains cognitive errors such as being too confident in one’s judgment and as reacting differently to information depending on how it is framed (ninety percent survival rate for a surgery versus ten percent chance of death).

As we investigate a case and get ready for trial, we should keep WYSIATI in mind. If we find one good witness, we should consider looking for additional witnesses in part to make sure that we are getting a full picture, rather than just stopping. We should consider what the defendant might know that we do not. We should consider what evidence might exist that we do not know about, and we should consider what evidence we would be looking for if we were the defense attorney.

Similarly, if you are mooting your opening statement or closing statement, make sure you have someone in the room who does not know much about the case and has little invested in how the case was worked up or presented. That person will probably have better insights into how the jurors will view the case than the agents and lawyers that are invested in how things have gone so far.

Good luck!

Stephen Chahn Lee has been an Assistant United States Attorney in the Northern District of Illinois since 2008, most recently serving as senior counsel in his office’s health-care fraud unit. Before becoming an AUSA, he was an associate at Debevoise & Plimpton LLP and a reporter for the Chicago Tribune. He is a graduate of Yale College and Columbia Law School.

Page Intentionally Left Blank

Keys to Successful Webinars

If you have ever participated in online instruction, you know the format presents some challenges for the instructor, in particular keeping the audience engaged. When delivering a virtual training, your audience has many more distractions than in a classroom setting, including emails, visitors, and other work. By being mindful that you will be competing for your audience's attention more than in a classroom and taking this into account in both your design and your delivery, you can make any training webinar more successful.

I. Webinar Design Tips



A. Before the Webinar

Create opportunities for interaction with your first message to participants after they enroll. Use this message to invite students to send in questions or concepts they hope will be addressed, or complete a brief pre-training survey on their level of familiarity with the subject. You also can share an advance handout containing background information or a brief and relevant exercise to be completed before or during the webinar.

Use interim communication between enrollment and the training date to set expectations. As the date for the webinar approaches, send students information about how to join the session, asking them to do so five to ten minutes prior to the start time so they will be present and ready when the training begins. Let them know you will begin at the appointed time and that you will expect them to respond to questions

during the training. Consider sending them a “Do Not Disturb—Training in Session” sign to post on their door or cubicle to minimize interruptions.



As participants log in, greet them and welcome them to the session. If you are working with a facilitator, the facilitator can greet students and handle any connection issues that might arise. Feel free to use this time to chat with participants, as you might in a classroom, about their backgrounds and how the subject matter relates to their work. This gets students (and you) more comfortable with virtual interaction.

B. During the Webinar

Encourage participation from the very beginning by starting with an interactive exercise, keeping any introductions or housekeeping announcements (preferably made by a facilitator) to a minimum (no more than two minutes). Your opening exercises can include asking a multiple choice polling question, making a series of statements and asking participants to raise their hand each time they agree, or asking each participant to share (simultaneously, using the chat window) what they are hoping to get out of the training. The goal of the exercise is to get everyone involved, engaged, and thinking about the content. If you are unfamiliar with using these webinar engagement techniques, the Office of Legal Education has experts who can show you how they work and how to intersperse these types of exercises throughout the training.

As you proceed with the training, plan to visually engage the audience every thirty to ninety seconds by showing a new image or by using animation or drawing tools. Every three to five minutes, plan to physically engage the audience by asking them to type in an answer to a question in the chat window, answer a multiple choice question, or raise their hand if they believe a statement is true. If you ask participants to answer questions using the chat window, start by asking questions that have more than one right answer. This encourages participation by multiple participants and alleviates their fears of getting the question “wrong.” Some examples of this type of question are asking what their experiences are with something or asking them to find one thing done well (or poorly) in a hypothetical scenario that you pose. Conversely, if you have a large group and want to cut down on chat amongst participants or keep them from being distracted by the chat of others, you can use the question and answer pod instead of chat pod so that questions come only to you and the facilitator. Either way, it is usually helpful to agree in advance with the facilitator about how you want him or her to handle questions and comments—which ones to share with you and at what points during the webinar. It is a lot to keep up with to present a training by webinar and read the questions and comments as they come in without losing your train of thought. When the facilitator does share questions with you, you can answer those you think are relevant to the entire audience during the training and answer other questions privately after the formal training session ends.

There are a variety of ways to engage webinar training participants that you may not realize are even available if you are new to this delivery method. With some advance planning, you can call on a participant by name to answer a question either in chat or by taking that participant’s microphone off mute to permit her to join the conversation. Another available technique is assigning participants to pairs or teams during the session and asking them to use private chat to discuss a question or come up with an example. After giving them a set time for collaboration, you can ask each pair or team to share what they discussed or decided. You can also make this a competition, asking the first team finished to raise a hand. All of these approaches can be used to make the virtual training experience much more

satisfying than when learners simply watch a series of slides on a screen while hearing the instructor speak.

C. After the Webinar



To help participants to remember the training content and transfer the knowledge gained during the webinar to their work, it is helpful to provide them with resources they can consult for more information and, if appropriate, with a checklist or other brief job aid to refer to later. Giving your contact information permits students to follow up later with questions. Finally, to assess the effectiveness of the training, use an evaluation to solicit student comments, and use your own observations to answer the following questions:

Design

- Was my objective and structure clear?
- Did I follow my presentation framework and timetable?
- What content chunks or activities needed more or less time?

Delivery

- Were the activities relevant?
- Did they get everyone involved?
- Were they placed appropriately?
- Did participants get to apply what they learned and get feedback/guidance?
- Were my activity instructions clear?

Development

- Were my handouts used in class helpful?
- Were my slides visually appealing with relevant images?
- Did my slides match my content?

II. Webinar Delivery Tips

Part of engaging the audience is designing the presentation to include interaction. The other part is delivering your content effectively and engagingly. Consider the following online presentation tips when preparing for, practicing, and delivering a virtual presentation.



A. Set the Stage

- Ensure you have proper lighting and avoid sitting with your back to a bright window
- Eliminate background distractions and clutter and silence your phone
- Position yourself so your head and shoulders are in the camera frame and gestures are captured
- Place your notes on your screen near your webcam to simulate eye contact
- Check for eyeglass glare and adjust the height of your chair or tilt of your screen if necessary

B. Use Body Language and Voice to Your Advantage



- Use an open posture, avoiding crossed arms
- Stand or sit up straight
- Energize your delivery, especially if sitting down

- Vary your voice inflection to avoid a monotone
- Speak slowly and clearly, don't rush
- Don't use a script
- Use pauses rather than "non-words" like "um" and "uh"
- Place your notes at eye level to avoid looking down (the audience only sees the top of your head)

C. Maintain Control

- If using a facilitator, clarify in advance his or her role and responsibilities, including opening and closing the session, monitoring chat, and handling technical questions and issues
- Closely monitor the time and ensure you follow your design framework
- Plan for how you will handle common technical problems and don't over-apologize if something goes wrong



III. Conclusion

Virtual training can be just as effective and engaging as face-to-face training if planned and executed thoughtfully. A webinar is a perfect delivery method if your goal is to provide information and entertain questions about a specific topic, especially if time is of the essence in sharing the information or if face-to-face training is not an option because of the time and expense involved.

The Office of Legal Education (OLE)'s Faculty Development Institute (FDI) has recently developed a class on delivering instruction by webinar. If you want more instruction and practice, I encourage you to monitor the OLE training announcements or the

FDI website for future offerings of this class. Of course, it will be offered by webinar!



Mary Beth Pfister is Assistant Director for Curriculum and Faculty Development at the National Advocacy Center, where she has developed training for the Department of Justice since 2008. She previously served as a criminal Assistant United States Attorney in the District of Arizona.

Before joining the Department, she was an equity partner at a law firm in Phoenix. She earned her J.D. from Harvard Law School.

Testing Students to Improve Learning

A Practical Academic Perspective

While instructors continually try to improve the quality of their teaching, academics contribute to the effort by investigating the ideal mechanisms for encouraging such growth in practical terms. The result? A kaleidoscopic array of methodologies geared to tackle this challenge. Unfortunately, not all instructional techniques are created equally, or with the noblest of intentions. Educational fads come and go, often seemingly motivated more by lining proprietors' pockets than by establishing sound practices for promoting learning. The goal of this article, therefore, is to avoid pop-science and "edutainment" practices, and to provide instructors with a sound technique to improve their teaching and (ultimately) to develop more engaged and knowledgeable learners.

I. The Testing Effect

One promising, research-based strategy for boosting learning and retention is known as test-enhanced instruction, or alternately, the "testing effect." Test-enhanced instruction occurs whenever teachers periodically assess students' abilities to demonstrate subject matter knowledge and skills-based competence related to (previously exposed) instructional materials. Examples include hypothetical questions, discussion groups, and practice activities (Figure 1). The key to test-enhanced instruction is that the content and skills checks take place *during* the instructional event(s), either singly or across multiple (spaced) occasions.

¹ Ashley N.D. Meyer and Jessica M. Logan, *Taking the Testing Effect Beyond the College Freshman: Benefits for Lifelong Learning*, *PSYCHOLOGY AND AGING*, 28(1), 142-47 (2013).

² Henry L. Roediger, III and Jeffrey D. Karpicke, *Test-Enhanced Learning: Taking Memory Tests Improves Long-Term Retention*, *PSYCHOLOGICAL SCIENCE*, 17(3), 249-55 (2006).

³ Christopher A. Rowland, *The Effect of Testing Versus Restudy on Retention: A Meta-Analytic Review of the Testing Effect*, *PSYCHOLOGICAL BULLETIN*, 140(6), 1432-63 (2014).

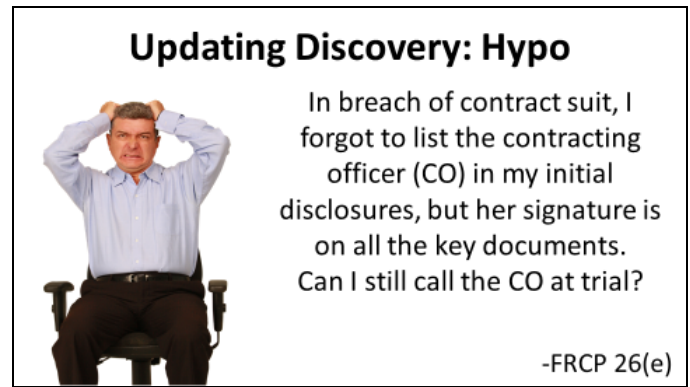


Figure 1. Sample hypothetical question used by an instructor during a Basic Civil Pretrial Practice course to test students' understanding of Rule 26.

II. The Research

Research indicates that test-enhanced instruction is an effective strategy for adults¹. Testing during instruction requires students to practice retrieval of information and skill, which has been shown to enhance memory and learning². Encouragingly, it also appears that the retentive advantages of embedding content and skills checks may extend beyond the initial learning/testing phase. Studies indicate that learners possess a comparatively greater degree of content knowledge and skill in longer-term scenarios following test-enhanced learning when judged alongside alternate methodologies such as merely restudying the same material³. Evidence also suggests that the testing effect holds across multiple learning environments, as beneficial outcomes have been observed in both face-to-face and online instructional settings⁴. Perhaps more importantly, research on the testing effect indicates that periodic demonstration of skills and content knowledge during instruction contributes to improved job performance.

III. Ways to Integrate Testing

As DOJ instructors, you have at your disposal many tools for blending content and skills checks into your regular training sessions. Here are a few.

⁴ Veit Kubik, Lars-Göran Nilsson, Jonas K. Olofsson, and Fredrik U. Jönsson, *Effects of Testing on Subsequent Re-Encoding and Long-Term Forgetting of Action-Relevant Materials: On the Influence of Recall Type*, *SCANDINAVIAN JOURNAL OF PSYCHOLOGY*, 56, 475-81. See also Ken Wojcikowski and Leslie Kirk, *Immediate Detailed Feedback to Test-Enhanced Learning: An Effective Online Educational Tool*, *MEDICAL TEACHER*, 35, 915-19 (2013).

A. Clicker Questions

If you use PowerPoint for presentations (as the majority of teachers do), you have the option of collecting responses using “clickers,” or electronic voting devices. Simply embed questions into your slideshow and have students respond to on-screen prompts. The system also allows for time limits on responses, and provides the ability to display real-time results in easily interpretable bar graphs (Figure 2). In the absence of clickers, you may employ the tactic of intuitively stopping at certain points to ask questions open to the entire audience. As long as every student has the opportunity to raise their hand and participate, it is reasonable to believe that most will engage in some form of mental “reprocessing” or “rehearsal” of newly taught content, even if they do not answer the question directly. This creates the potential to promote greater familiarity with instructional/training materials.

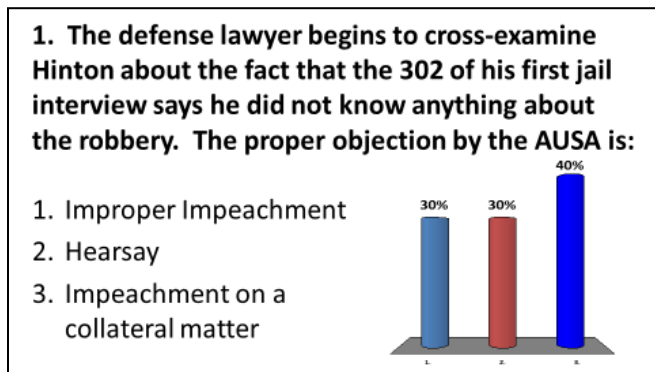


Figure 2. An example of a “clicker” question used in a Basic Criminal Trial Advocacy Course to test students’ understanding of proper objections.

B. Discussion Questions

Another option is to incorporate test-enhanced instruction as part of directed group activity. Suppose, for example, that you have just discussed a litany of specific regulations and statutes concerning an area of civil or criminal law. You may then present to the audience a complex, ambiguous case as a “content check,” and task the group with deciding the appropriate way to proceed. By placing the students into pairs or small groups, and having them apply (or rule out) options for trying cases, you encourage their *active interaction* with the new material in a manner that is authentic (in content, if not environment) to their daily working lives. Small group discussions leading up to decisions also afford trainees the chance to receive corrective feedback from peers, if their reasoning is misguided.

C. Distance Learning

In a distance learning situation, your options for implementing test-enhanced instruction are unavoidably more limited. However, given such proximity limitations, incorporating content checks into instruction is still relatively uncomplicated. As with in-house instructional events, you may insert questions into your presentations at specified time points. While you will not receive “real-time” performance results, your students will nonetheless be prompted to apply cognitive processes to freshly learned material. This reevaluation of content may be a primary driver of the effectiveness of test-enhanced instruction.

IV. In Closing

The search for strategies to improve instruction and learner performance is an unending effort. Fortunately, trainers have a plethora of methods at their disposal to induce positive change. Navigating the landscape of potential approaches can quickly become a daunting exercise. Considering the rationale and evidence outlined previously, test-enhanced instruction deserves a place near the top of everyone’s list of “go-to” teaching tactics.



Corey Boswell, PhD, is a contract Research Scientist with the Department of Justice’s National Advocacy Center (NAC). He recently completed his dissertation at the NAC, examining ways to improve the effectiveness and efficiency of mandatory training using test-enhanced instruction.

Effective Training

The Students' Perspective

Part of my job on the Curriculum Development and Instructional Design Team at the Office of Legal Education is to analyze and report on student feedback. This means I read a *lot* of course evaluation comments. I also conduct a variety of focus groups with students, in which I gather more in-depth information about their experiences in our training programs. From this information, common themes emerge on what students consider effective (and ineffective) training.

I. Workshops



Students consistently rate workshops as the most effective aspect of training programs that include them. Workshops and small group exercises provide students the opportunity to practice new skills, receive constructive feedback from their peers and facilitators, and immediately incorporate those suggestions to improve those skills. Working in small groups allows collaboration and the opportunity to network, engages the students in activities as a group, and provides students with additional insight by watching others hone their skills as well. If you are interested in building a workshop into your training, consider the following student preferences:

- Use groups of four to six students. This allows adequate time for each to practice and receive sufficient feedback within an allotted time frame.
- If students make presentations in the workshops, tape the presentations for later review, either guided or independent.
- Use well trained facilitators who have experience giving high quality constructive feedback, and

switch them between groups to give students exposure to more than one viewpoint. For consistency of experience, hold a preparatory meeting with facilitators in advance, and provide them with clear guidance for how to conduct the workshops.

II. Engaging Lectures

The small group breakout sessions were effective in helping us to digest and apply the information we were hearing.

Incorporating exercises is a brilliant way for keeping [our] attention.

Creating a strong foundation for a workshop starts with an effective lecture. Students always comment favorably on instructors who are knowledgeable, organized, and enthusiastic, especially when they are all three! Assuming you already have those qualities, what else can you do? Feedback from our students provides helpful information on what to do and what to avoid doing.

Student evaluation comments consistently indicate that the most well-received lectures are those that are relevant to the learner's practice (do not skip the basics when it's an introductory class, for example), those that use interactive techniques (like posing hypothetical scenarios), and those that provide practical examples (those relevant to what the audience is likely to encounter). Following the Backwards Design Model when you design your presentation can help lay the groundwork for an effective lecture that includes these components. *See Designing Training to Improve Employee Performance.*



It's hard to sit there and just absorb, so the interaction using the clickers was good to break up some of the sections and helped us digest it a little differently.

I thought the practical aspect, practice tips and lessons learned, were the most effective aspects of the training.

What students do not like is when instructors try to fit too much into a presentation and end up rushing through and having no time for questions, or worse, going over their allotted time. This leaves the learners feeling overwhelmed and leaves the impression that the instructor is not concerned with their experience. Consider practicing your presentation in advance to ensure you do not try to cover more than is reasonable in the allotted time and that you can pause periodically to solicit and respond to questions.



III. Slides Done Right

PowerPoint presentations are widely used by instructors and can enhance a presentation. However, students uniformly criticize slides that contain too much text; students would prefer to see only key points and main takeaways instead. Instructors who rely on their slides to set forth a “script” for the presentation receive the harshest criticisms.



As a general matter, when [instructors] picked a few key things instead of trying to cover the universe, I think that was more effective.

Conversely, students love it when instructors use slides to illustrate points with helpful images and graphics.

To correct overloaded slides, first determine the critical content to include in your slide presentation, and limit text to headings and key points to keep you and your students on track. Substitute relevant and high quality graphics for text where you can. If you have a topic that requires detailed coverage, or you want to provide citations, consider using substantive handouts to provide this information as a useful takeaway.

Case presentations and PowerPoint slide decks were occasionally too detailed.

The presentations should be built around the takeaways.

IV. Helpful Supporting Materials

Our focus groups and sixty-day course follow up surveys show that students rarely refer back to their copy of PowerPoint slides from a presentation. Instead, students want materials to reference when they return to their office that they can easily use to help them do their jobs better. As you prepare your presentation, think not only about what materials you will use in class, but also about what supporting materials you can provide for use after the training is over. Specific materials that students frequently

request and say they appreciate include the following:

- Checklists
- Case summaries
- One page summary handouts
- Templates
- Step-by-step guides

Interestingly, students tend to find most helpful those materials that you use and discuss in class. So, if you create a helpful checklist for later reference, pointing it out during class and explaining how to use it will significantly increase the likelihood that students will use it later.

If you are using slides for your lecture, know that students are really bothered by instructors who change their slides after the materials have been printed by OLE. They find it confusing when you make last minute updates such that what's shown on the screen doesn't match what's in print, especially for those students who like to take notes during class next to their copy of the slides.

V. Final Thoughts

As evidenced by our student feedback, an effective presentation begins with the design process: knowing your audience, identifying clear objectives for your presentation, and incorporating practical activities. Developing helpful materials for use both during and after the training further enhances the learners' experience.



Stani Day is a contractor at the Office of Legal Education, where she evaluates and reports on course data, conducts focus groups, creates and updates educational materials, and assists with research on instructional design. Stani has worked in

higher and adult education since 2013. She has a M.S. degree from the University Of South Carolina School Of Medicine.

Page Intentionally Left Blank

International Training

Challenges and Rewards

I. A First Person Account

I will never forget the day I discovered that the United States Department of Justice (DOJ) offered the opportunity to live and work overseas. I had been paying for my international travel and tours for years, and now the United States government (USG) would pay me to work and live abroad? And I can take my stuff, including my pets, and work on a different continent and time zone from my boss. Where do I sign up?

Sign up I did, and eventually I was offered opportunities to live and work in Azerbaijan, Albania, Uganda, Kosovo and Croatia, and to teach in all these countries plus Turkmenistan, Georgia, Russia, Pakistan, East Timor, Kenya, Tanzania, Macedonia, Montenegro, Serbia, Bosnia and Herzegovina, Austria, Hungary, Romania, Indonesia and more. However, not everyone wants to move abroad. After all, how bad can your caseload, boss, or mother-in-law be? I am here to tell you that you don't have to sign up for an entire year to teach police, prosecutors, judges, defense attorneys, civil society, and law students across the world. Currently, the Office of Overseas Prosecutorial Development Assistance and Training (OPDAT) has programs in more than forty-seven countries, and it is always looking for instructors to teach abroad. While extremely rewarding, international training is a lot different from a flight into Columbia, South Carolina and checking into the National Advocacy Center (NAC). From the length of the flight to the quality of the food and venue, there are few similarities between the United States training experience and the international arena. Hopefully, this article will prepare you for the experience or help you better understand that when your colleagues get a chance to teach overseas with a connecting flight through Paris or London, they are not on a boondoggle or vacation. International training is hard work and comes with many challenges.

II. Challenges

A. Instructors

For the most part, the training organizer (usually the Resident Legal Advisor, or RLA) chooses who the instructors will be. When making the selection, the RLA is mindful that a fantastic case agent or exceptional trial attorney does not automatically make an excellent trainer. In addition to training skills, the instructor the RLA is looking for is one who is willing to travel long distances (in economy class), across time zones, and be adaptable to a training event and environment very different than the accommodations, classrooms, and meals at the NAC. If chosen to teach abroad, be sure to pack a carry-on with several changes of clothing, including suitable training attire. Luggage often travels on different planes to destinations different from the SATO itinerary, and it may be days or even weeks before the instructor is reunited with checked luggage.

There may also be the need to get vaccinations or prophylactic medications for hepatitis, yellow fever, malaria, and any number of other infectious diseases. Drinking bottled water, avoiding ice and uncooked food, and brushing your teeth with bottled water prevents many of the symptoms and discomfort associated with Baku Belly, Kampala Kramps, and related maladies; but still, it's recommended that you travel with medicines for the common ailments.

B. Participants

Often the RLA does not get to select the participants for the training. Instead, an announcement of the training is sent to the appropriate institution in the host country, and the RLA is informed who is assigned to come to the training. Thus, you may have a mix of junior and senior legal professionals, as well as willing and unwilling participants.

The participants often do not speak English, and in some countries or in the event of regional trainings there will be simultaneous interpretation for three to five languages.

Even when participants speak English, their accent may be so different that you will have trouble understanding them. Participants are often very conscious of rank and will not open up if a senior colleague or supervisor is in the room. In some countries, there is so much national pride that participants will lie about their laws and their implementation, which may make you feel that the training is unnecessary.

C. Languages

Teaching internationally with the aid of interpreters raises a variety of issues, including problems if you talk too fast for the interpreters, the possibility that something is lost in translation, and the need to avoid popular idioms, clichés, or even lighthearted jokes. These restrictions can impair an instructor's usual smooth delivery.

For example, when instructing on how to improve PowerPoint presentations (all instructors need the NAC Faculty Development Institute (FDI) training on this), I decided to use the popular idiom about a leopard changing its spots. So I showed this photo of a leopard and asked the audience what was the popular saying about leopards:



In Indonesia I got a quick, "You can't change the spots on a leopard." In a regional Western Balkans training, however, I got blank stares and absolute silence—the sign of a training going sour. Luckily, I was not thrown off course too much, and in the ensuing discussion I learned that in the Balkans they have an idiom about a grandmother in wolf's clothing (do not even ask), but nothing about leopards.

Luckily, the "teaching an old dog new tricks" idiom is understood in the Balkans, so I have now substituted the leopard with these photos:



Teaching in a foreign language also means that the teaching materials **MUST** be submitted far in advance of the training and cannot be changed. This is especially challenging for those who are juggling a full caseload and trying to prepare for the training on the overnight flight from the United States. A word of caution: just don't! Prepare and commit to your materials, and if you did your PowerPoint per the NAC FDI's guidelines, you won't need to make changes. All your thoughts and insights will be in the delivery, not written in the PowerPoint.

D. Cultural and Historical

You will never know the history and culture of the country like the locals, but it is important to have a basic understanding of cultural practices and historical events and to be nonjudgmental. For example, in Pakistan a female prosecutor asked me what it was like to be free. I tried to clarify the question by asking the woman to explain her life so I could compare the differences. She proceeded to tell me that her husband was selected by her parents and she married him without ever knowing him before the wedding date. She had no choice in the matter and is living and raising children with a man her parents decided she would marry. A male prosecutor chimed in and said it was true for men too, but at least according to the Quran, he could take additional wives if he didn't like the one his parents chose. Here is where a bit of history and culture comes in handy. I told the male prosecutor that the Prophet Mohamad and the Quran only allow additional wives if they can all be treated equally. The Quran also condemns corruption and dishonesty. Since a Pakistani prosecutor's salary was too low to support more than one wife and children he could not afford to take on another wife unless he was corruptly enriching himself. Both prosecutors

laughed and agreed and appreciated that I knew some of the teaching of Islam.

In addition to knowing a bit of the local history and culture, you also need to be prepared for how well informed many of the students are about American history and politics. They will want to engage in a discussion and elicit your opinions. This can be tricky if not treacherous territory. A USG official is not allowed to express personal opinions about presidential debates or elections or to express disagreement with the foreign policy of the sitting president.

E. Participation

Often participants will not talk. They won't raise their hand, they won't ask a question, and they won't respond to a posed question. They just won't talk. If, on the other hand, you are trained in the NAC FDI's engagement techniques and you get them talking, they may not stop! Be prepared for discussions that are long on words but delayed in getting to the point of the question. Federal prosecutors are taught to speak succinctly for fear of being cut off by a federal judge. International audiences will frequently take to the mic and thank the organizers, tell a long story about a case they had, and switch from topic to topic before surprising you with a question that you not only didn't expect, but that you can't answer because you are too unfamiliar with the topic, local procedural code, or practices. I've had success employing another FDI technique: turning the difficult question over to the audience and asking what they think. This gives you time to contemplate how to regain control of the discussion.

An American instructor abroad should also be ready to manage the unexpected answer. For example, in Uganda a question was posed to a group of senior judges in a judicial ethics course:

You have heard all the evidence in a case and have decided to rule in favor of the plaintiff and scheduled the hearing to announce the ruling for next week. A few days before the scheduled hearing, the attorney for the plaintiff offers you money to rule in favor of the plaintiff.

Would accepting the money be a corrupt act



Using TurningPoint software and clickers (technology that allows anonymous voting) 100% of the judges voted that this would not be a corrupt act. Shocked by the answer but avoiding launching into a lecture on ethics, the judges were asked why they all voted "no". It turned out that the definition of bribery and a corrupt act by an official person under the criminal code required proof that the bribe influenced the decision or outcome. In this case, the offer or acceptance of money did not change the decision the judge planned to render. Avoiding the holier than thou lecture led to a fruitful discussion on the legislative deficiencies, but also the negative consequences of the one offering the bribe believing the offered and accepted bribe determined the outcome in the case.

F. Time Management



Managing time is a common challenge with international training. Many participants think nothing of showing up thirty to ninety minutes late for a training and coming and going as they tend to official or personal duties. Many participants are smokers and enjoy very leisurely coffees. Unlike

American coffee that is consumed while commuting or at the work desk, international audiences can make a 1/2 inch of cold coffee (including the grounds) last for hours. They will need time to get to the smoking area (if your venue is one of the few that prohibits indoor smoking), have a few cigarettes, enjoy a coffee, and at the end of the break time, find their way to the restrooms which invariably have too few stalls. Knowing this at the outset of training is helpful, so you know not to take delayed returns from breaks personally, and you can plan for the virtual certainty that sessions will not always begin on time.

The instructor also needs to be aware that you can never really use the allotted time as planned. In most cases you will not have enough time, but there are the rare situations when you run out of material and there are no questions (probably a sign your training doesn't follow the NAC design and delivery methodologies); so you need to have a plan to fill the gap. Using one of the engagement exercises recommended by the NAC FDI course will help you avoid looking at your watch and a speechless audience.

G. Learning Methodologies

Many participants were educated under a system that emphasized memorization and discouraged analytical thinking. Thinking analytically or questioning the principles taught were unheard of, and even punishable by imprisonment in some countries. This will heavily influence how they learn and adapt to the more interactive training style most American instructors use.

DOJ OPDAT does a significant amount of trial advocacy training abroad. The techniques and topics we take for granted in the training offered to U.S. prosecutors often have to be significantly revised to adopt to local rules and practices. Many criminal procedure codes prohibit leading questions, allow the judge to ask questions (thus ruining your carefully calculated surgical evisceration of the defendant or other witness), and most foreign prosecutors have never been trained to think analytically and strategically before asking the first question.



An American instructor should become familiar with the local procedural codes and avoid talking about U.S. practices.

We have a system unlike any other (even in the common law countries of Africa), and for the most part, there is no relevance in talking about grand juries, trial by juries, and a case agent that is with you from the investigative stage through the trial. You will probably be presenting to an audience that has a procedural code with a very different investigative stage, very broad privileges for witnesses, and a right for the defendant to lie during his or her trial testimony. As many criminal procedure codes specifically exempt the defendant from a perjury prosecution for lying under oath, for most international prosecutors, cross examination is merely a repeat of the direct examination sometimes ending with a punch line of, "*I put it to you, you are a liar!*" The local code also likely prohibits leading questions even on cross examination, allows for a trial of a person in absentia, and permits the prosecutors to appeal an acquittal. Discussing irrelevant U.S. practices evinces a lack of preparation and appreciation for the local code.

By working with the RLA in advance to understand the local code and practices, the U.S. instructor can better prepare a presentation that adjusts for the differences in learning experiences and procedure and penal codes.

H. Infrastructure

Many countries and training venues do not have reliable access to power or water. That means not only that you cannot use your PowerPoint, but you also will not have equipment for sound and translation. When there is no power, there may be open windows and competing noise from outside. If you do have power or open windows, you often have an audience that believes the use of air conditioning or a refreshing breeze will make you sick with a life threatening cold; so be prepared to "sweat it out" literally. And don't plan to refresh yourself with a cold drink after class—there may be no ice, it may not be safe, and you may be served room temperature drinks to avoid the inevitable sore throat caused by consuming cool or cold drinks.

Sometimes the training is residential for the participants and instructors, and this can lead to additional benefits and challenges. The evenings after trainings like this allow for many exchanges between participants and instructors that would never happen if everyone goes home or if only the instructors go back to the hotel at the end of the day.

III. Rewards

While the challenges are many and you can never be prepared for everything that might happen, once you are selected to serve as an instructor abroad, with the right attitude and preparation, you will embark on an experience of a lifetime. You will have the opportunity to travel to places you probably would never go if planning a vacation. You will be introduced to people, cultures, and practices you knew little to nothing about. Perhaps more importantly, you will have the opportunity to change a person's view of what an American is, as often you are the only American the student has and will ever interact with. Their views of Americans are usually shaped by the media, movies, music, and rumor. You can change how they learn and also change how they practice. To be told after a trial advocacy training that the OPDAT team did more for the professional development of a prosecutor in a week than his country had done in his whole career is gratifying to hear, even if it is incredibly disheartening to know that a prosecutor has been so ill prepared to carry out the extremely important work.

If you reside at the venue with the participants during a residential training, you will find that much of the learning occurs outside the classroom, and the U.S. instructor learns as much (or more) as the participants.

Finally, when you return to the comfort of the CRM division or the U.S. Attorney's Office with your caseload and occasional NAC trainings, you will be forever grateful for all the support we get from agents, support staff, colleagues, and (hopefully) the public for the important work we do. You will also have a new appreciation for the fairness of our criminal justice system and the tremendous power and responsibility you have as a federal prosecutor.

Advocacy Center (NAC) and as the Deputy Training Director for DOJ's Criminal Division. Ms. Sreenan also has seven years' experience as a state prosecutor and five years combined experience as a police officer and a probation and parole officer.

In addition to her prosecutorial experience, Ms. Sreenan has worked in several countries as part of the Justice Department's OPDAT program. She served more than two years in Kosovo, two years in Uganda, approximately three years in Azerbaijan, and one year in Albania. In addition to her five RLA positions, Ms. Sreenan has taught in East Timor, Indonesia, Turkmenistan, Russia, Georgia, Hungary, Pakistan, Kenya, Tanzania, and throughout the Western Balkans.

Beth Sreenan is a United States Department of Justice (DOJ) trial attorney currently working in Zagreb, Croatia, as a Resident Legal Advisor for an OPDAT implemented rule of law program for the Western Balkans (Albania, Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro, and Serbia).

Ms. Sreenan has been with the Justice Department since 1991 and worked as an Assistant United States Attorney in the Southern District of Florida from 1991 to 2008. Ms. Sreenan also served as an Assistant Director of Training at DOJ's National

Page Intentionally Left Blank

Note from the Editor in Chief . . .

We are honored to celebrate the 20th Anniversary of the National Advocacy Center (NAC) by publishing this special edition USA Bulletin on training. You will see that we broke from our traditional law journal format to give creative license to our authors and NAC staff to produce a visually stimulating issue. From our 20th anniversary cover, specially designed by Shelburne McGovern (JTN), to the two column format, and use of color and graphics, this issue is unique. Congratulations to the entire NAC team, past and present, for providing top quality training to the U.S. Attorney community and the Department family for the last 20 years. We are all better at what we do because of their efforts.

Thank you,

K. Tate Chambers