

# *PROSECUTORS' ENCYCLOPEDIA IN A NUTSHELL*



**New York Prosecutors Training Institute, Inc.**  
Providing Continuing Legal Education and Mutual Assistance to New York State Prosecutors

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# I. What is Prosecutors' Encyclopedia (PE)?

Just imagine having access to a tool that:

- Allows you to watch videos of expert witnesses testifying in real cases.
- Automatically provides full text decision links for almost any document.
- Provides free access to case law, memos, briefs, and other legal documents.
- Has information on thousands of expert witnesses including: transcripts, CVs, and automatic links to any peer reviewed publication the witness has authored.
- Allows you to watch videos on how to use your computer, and contains tons of successful PowerPoint templates.
- Let's you watch CLE presentations.

If you're a Prosecutor you do have access to such a tool! It's called Prosecutors' Encyclopedia (PE). And you can create an account today by going to [www.MyProsecutor.com](http://www.MyProsecutor.com), requesting an account using your official Arizona agency e-mail address. And there's no cost to you or your office.



PE is all about **YOU!** The concept is simple: a resource where **Prosecutors help Prosecutors.** Because we all learn from each other, and groups are typically smarter than individuals. In a nutshell, PE is about **Teamwork.**

PE Help is always available. Just send an e-mail to [PE-Help@nypti.org](mailto:PE-Help@nypti.org)

## II. Where do I start?

In PE, all the magic begins from the "Main page" and "Search Bar" in the top right.

The screenshot shows the main page of the Prosecutors' Encyclopedia (PE) website. The page features a navigation menu on the left, a search bar in the top right, and a main content area with various sections. Red callout boxes are overlaid on the page, providing instructions and information:

- Go back to the Main Page or get help.** (Points to the navigation menu)
- Edit your preferences, watched pages, or view your recent contributions.** (Points to the user profile area)
- Use the search box that is always on the top right corner or click the Advanced Search link.** (Points to the search bar)
- Depending on your state, there may be state specific links here.** (Points to the "DIRECTOR" section)
- Helping you find the latest information on experts.** (Points to the "NEW TO PE?" section)
- You can now download any page in PE as a PDF and print it.** (Points to the footer)
- NYPTI is very appreciative to those that helped make PE a reality: State of New York, National Institute of Justice, VersusLaw, NAPC, NDAA, state prosecutor organizations and countless prosecutors.** (Points to the footer)

A **key concept to remember: In PE any text in [BLUE](#) is a hyperlink** to something else or to more substantive content.

PE is a secure website, developed and maintained by the New York Prosecutors Training Institute ([NYPTI](#)) specifically for prosecutors. PE is a “wiki” website, which means that all users may add and edit nearly all of the content in PE. The **major difference** between the well-known Wikipedia and PE is that **PE edits are not anonymous** - every edit is attributed to the prosecutor who performed the edit. Additionally, PE is much more than just a “wiki” because it is customized just for prosecutors with countless unique features.

### III. Searching PE

#### A. Simple searching from the upper right tool bar

On the top right side of your screen there is always a search box. As you type, PE automatically suggests existing articles that match what you are typing. To search a term or phrase - simply click on the magnifying glass, or hit enter.



PE is simple to search, but there are some key concepts to keep in mind no matter which method you use:

- **PE will search for articles that include whatever you've typed.** It also searches common variations - for example, doctors and doctor are treated the same way. Titles, article text, and file contents are all part of the search.
- **If you do not get an exact match,** you will see list of articles, files, and decisions that contain your search terms (or a message indicating that no matches were found).
- **Search is not case-sensitive** "Prosecutor," "prosecutor" and "PROSECUTOR" all give the same result.
- **Setting your content types.**

**In "Preferences" you can set the default places that you always want to search in PE.** By default, PE only searches “Main” and “Files” so you may want to add decisions to your all of your default searches. Adding decisions is helpful because if we do not have a specific file or articles on point there's a high likelihood that there will be a decision on point.

- **Expert Witnesses each have their own PE page.** Type the expert's name to find the expert you are looking for. If you type only the expert's last name in the search bar, PE will attempt to find the closest match even if it is spelled incorrectly.

## B. Advanced Search - where the magic begins

Advanced Search

Terms and Connectors **Build a Search** Search Syntax

**Terms and Connectors**

Search for  Search

**Where**

Limit search to specific content types:

Main  Decisions  Editorials  Categories  Help

Files  PExperts  Discussions  Users

Everything

**Decisions**

Limit search to specific fields within decisions:

Author  Court  Parties  Citation

Everything

Decisions published from year  through

**Jurisdiction**

Limit search to content specific to:

Include Federal Court decisions corresponding to the selected state

All Jurisdictions

Search

In Advanced search, type words or terms you are looking for. Tap into PE's [Search Syntax](#) to help refine search terms using term connectors.

Select what areas of PE you want to search (i.e. articles, categories, decisions or actual files. *PExperts are actually other prosecutors who may be experts in specific topics.*

You can search specific fields when searching for decisions. .

What jurisdiction do you want to search? Sometimes the best you can do is a relevant argument from a sister state.

## C. Advanced Search - Build a Search

Advanced Search

Terms and Connectors **Build a Search**

**Build a Search**

with all of the words  Search

with the exact phrase

with at least one of the words

without the words

**Where**

Limit search to specific content types:

Main  Decisions  Editorials  Categories  Help

Files  PExperts  Discussions  Users

Everything

**Decisions**

Limit search to specific fields within decisions:

Author  Court  Parties  Citation

Everything

Decisions published from year  through

**Jurisdiction**

Limit search to content specific to:

Include Federal Court decisions corresponding to the selected state

All Jurisdictions

Search

Build a search is for users who are too busy to learn Search Syntax. Here, you create your Search by typing:

**All Words**

+

**Exact Phrase**

+

**At least one of these words**

-

**Without these words**

---

**PE Results**

You can also refine decisions and expand jurisdiction if required.

## D. What do the different PE Checkboxes Mean?

- **Main** – includes all pages/articles in PE
- **Files** – anything uploaded to PE (transcripts, sound clips, etc.)
- **Decisions** – U.S. case law from 1970-present
- **Users** – search for PE users
- **Editorials** – a space for users to share helpful information that is not necessarily substantive law see: [Editorial: Going Paperless](#)
- **Discussions** – each page has a discussion tab where users can comment
- **Categories** – pages and files are tagged/grouped by category
- **Help** – search PE Help
- Unless you **change your preferences**, only **Main**, and **Files** are searched by default.

To change your preferences click ["My preferences"](#) at the top of the screen or ["Here"](#)

## E. De-coding search result icons.



# IV. Understanding the structure

## A. Articles:

### Webguide for Prosecutors

[Attach a file to this article](#)

Contents [hide]

- 1 Introduction
  - 1.1 Links discussed during lectures
- 2 Basic Considerations for Electronic Research
  - 2.1 It's Easy to Get Overwhelmed
- 3 Free Legal Research Sites
- 4 Finding Information on Doctors and Experts
  - 4.1 Google Scholar
- 5 Information about the Forensic Sciences
- 6 Tapping Into Search Engines
  - 6.1 Always Use More Than 1 Search Engine!

Each article in PE typically contains a Table of Contents (TOC). From the TOC you can easily jump down to the relevant section by clicking the [blue](#) links.

In addition there may be links throughout each article - these will link

#### Introduction

[\[Attach a File\]](#) [\[Edit\]](#)

If you are putting a witness on the stand or cross examining a defense witness without running the witness name through [Google](#), [Dogpile](#), [Yippy](#) or another Internet search engine, you may get blindsided. With a few simple steps and less than ten minutes on a computer, you can easily eliminate or defuse some landmines that could potentially rock your trial.

Note: This page is adapted from:

- [Smith's Webguide NYPTI Summer College 2011](#)
- [Smith's Webguide - for outside NY State](#)

#### Links discussed during lectures

- [Technology at Work in the Casey Anthony Trial](#)
- [Did Social Media Make Casey Anthony's Case](#)
- [10 Minute Video by Dorothy Ripka \(Cordell and Cordell Law Firm\) on Finding Evidence through Social Networking](#)
- [Simplifying Technology](#)

- [IACP Center for Social Media](#)
- [IACP Social Media Survey Results Document 2010](#)
- [Capitalizing on Free Software](#)
- [Old Tricks for New Evidence - Colozza](#)
- <http://www.staw.ca/2010/05/28/are-technophobes-negligent/> - lawyers who refuse to use technology are similar to doctors who refuse to use the latest in medicine.

[\[Attach a File\]](#) [\[Edit\]](#)

[Internet Shortcut Keys](#)

#### Basic Considerations for Electronic Research

[\[Attach a File\]](#) [\[Edit\]](#)

Before discussing some basic, general terms it is important to know that the old saying 'what you say may come back to haunt you' has never been more true. Millions of people are e-mailing, posting to blogs, and using some form of electronic communication. Coupling these communications with inexpensive storage space, we are creating permanent records of our words and thoughts. Today, it has never been easier to tap into such a vast pool of information. Tapping into this information is nothing new - you can bet the defense bar has been doing it for years.

Credibility: Anyone can create a website for little or no cost and publish it to the world. This ease of publishing provides the goal of information that you should be tapping into to find information about any witness. This type of communication, however, bypasses the usual publishing channels and allows opinions or ideas to be expressed that may not be credible, so use caution - just because something is on the Web or in an e-mail doesn't mean that it is credible. Try to corroborate website information with information from other reliable sources.

#### It's Easy to Get Overwhelmed

[\[Attach a File\]](#) [\[Edit\]](#)

According to figures from [Netcraft.com](#), there will over 30 billion pages on the World Wide Web. As of April, 2011 there were at least 312,693,296 different Websites, with a growth of almost 14.7 million hostnames (the 12th consecutive month of growth). Sometimes finding a valuable piece of info is like finding a truly innocent person in the prison system. My goal is to give you tips on how to find what you are looking for.

[Top US Internet Sites - April, 2011](#)

Most articles will also contain links. These links are typically to other PE content, decisions in PE, external content, or files.

## B. File description pages:

The screenshot shows a file description page for "File:Smith Webguide NYPTI SC 2011.pdf". A callout box points to the "Feedback / Summary" section, stating: "Some files may be linked to more than one page. Here you can see the other pages." Another callout box points to the file name and Adobe PDF icon, stating: "Click on the link to open the file or 'right click' and choose 'save target as' download." Below the file name, there is a "File history" table with columns for Date/Time, Dimensions, User, and Comment. The table shows one entry: "delete all" on 12/28/2011 at 12:38 PM, 13 MB, by Sean Smith, New York Prosecutors Training Institute, Albany, New York (2024). At the bottom, there is a "File links" section with the text: "There are no pages that link to this file. The following pages link to this file and their links are aliased: Simplifying Technology/33 Technology Used as an Investigative Tool, Webguide for Prosecutors".

## V. PE's LAW Feature

### LAW = PE's Legal Analysis Wizard

Tired of slogging through cases in a document, or spending an entire morning just pulling cases? Try LAW! LAW automatically extracts all case cites from any document (think briefs, memorandums, outlines). You can control how much text you see around the citations, and the manner in which LAW searches for cites. Not only are all of the cites hyperlinked directly to the decisions, but you can also choose to email yourself an Rich Text File (RTF) file containing all of the hyperlinked cases. Perhaps you'd like to use this file as the beginning of a Table of Authorities – without the tedious task of typing every case? Or maybe you'd like to have, at your fingertips, every case cited by the defense, along with, if you choose, the text surrounding those cites. You could also use this feature to prepare for oral argument, as it provides a quick outline of every case. You can process almost any document. Just use PE's special LAW Upload by clicking the button at the bottom of PE's "Toolbox" menu on the left of the screen.



### LAW Saves YOU Time By:

There are countless ways to use LAW. Here's a few we've thought of:

- Perhaps you need to quickly read the cases in a defense memo so you can respond 30 minutes later in court. LAW puts every case cited by the defense at your fingertips, along with, if you choose, the text surrounding those cites as you initially read a defense brief.
- Use your LAW RTF file as the beginning of a Table of Authorities (TOA) for a brief – without the tedious task of typing every case!(Or trying to master other TOA tools).
- Prepare for oral argument, or get help with a brief you're editing, using LAW's quick outline of every case.
- LAW works on both your documents and defense documents, so the possibilities are endless. It also works on Word, WordPerfect, and PDFs. And don't worry if your PDF is straight from your office scanner. PE has software running in the background to quickly process almost any PDF and make it searchable so case citations are easily found and hyperlinked.

## VI. Cases in Document = (LAW)

All the pre-existing files in PE have already been processed by LAW. This means you can now view legal arguments in any file on PE right from the file description page without downloading the document. Just click on, **Cases in Document (LAW)**. To see an example of **LAW** in action, check out the Arizona Prosecutors' Manual: [Arizona Prosecutors Manual - APAAC](#)

E-mailing yourself a RTF from LAW can be used to:

- Draft a Table of Authorities
- View the cases cited by your opponent
- Quickly view your opponent's legal arguments
- Extract legal summaries from documents.

Make sure you experiment with LAW's various options - the are designed to provide easy custom results each time you want to view the cases in a document.

Options

Minimum ALLCAPS words in a point heading:

How many words before the citation:

How many words after the citation:

comma separated list of email addresses

## Uploading Your Opponent's Document to Extract the LAW



If you are uploading defense briefs the only thing we ask is that you check the box: **Exclude from PE's general search results**. This will help prevent the brief from appearing in regular PE search results.

Main page  
Basic Editing  
Recent changes  
Random page  
PE Help  
Contact Us  
Advanced Search

▼ Toolbox  
What links here  
Related changes  
Upload file  
Special pages  
Permanent link  
Download PDF  
LAW Upload

Special page

### LAW Upload

The document you are uploading will be processed by PE's LAW feature. LAW = PE's Legal Analysis Wizard.  
If the file you are uploading is a PDF file, LAW may not work properly if:

- The PDF is a poorly scanned image;
- The PDF is locked;
- Is from a Website that strictly limits their PDF files (even if the PDF is from a public source).

As with any other legal tool relying on computers, it is important to verify LAW detects all the case citations in your document.

When uploading files please remember:

1. Do not upload copyrighted materials without the permission of the copyright holder.
2. Please delete or redact personal identifiers when prohibited by law from disclosing.
3. Do not upload confidential Grand Jury materials.

For more information please see: PE's Disclaimer Page.

Source file

Source filename:  No file chosen

Permitted file types: doc, docx, rtf, pdf, wpd.

File description

Destination filename:

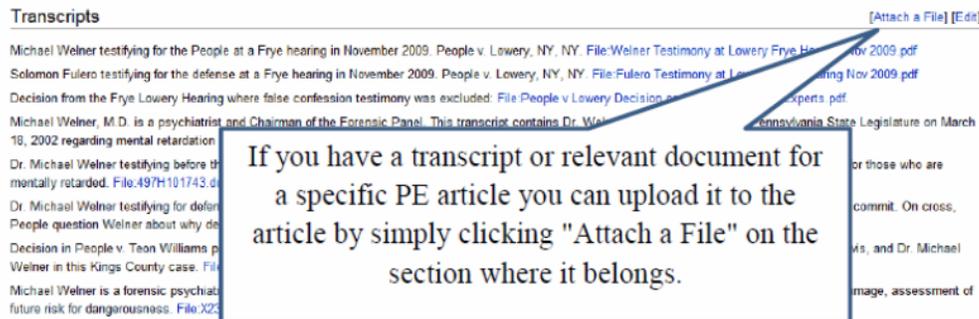
Summary:

Exclude from PE's general search results

## VII. Helping other prosecutors

### A. Attach files directly to a section of an article

If you have a relevant transcript, memo, brief, PowerPoint, etc. one of the best things you can do is attach/upload it to an article section.



**Transcripts** [Attach a File] [Edit]

Michael Welner testifying for the People at a Frye hearing in November 2009. People v. Lowery, NY, NY. File:Welner Testimony at Lowery Frye Hearing Nov 2009.pdf

Solomon Fulero testifying for the defense at a Frye hearing in November 2009. People v. Lowery, NY, NY. File:Fulero Testimony at Lowery Frye Hearing Nov 2009.pdf

Decision from the Frye Lowery Hearing where false confession testimony was excluded: File:People v Lowery Decision on Frye Hearing Nov 2009 - Experts.pdf

Michael Welner, M.D. is a psychiatrist and Chairman of the Forensic Panel. This transcript contains Dr. Welner's testimony before the Pennsylvania State Legislature on March 18, 2002 regarding mental retardation

Dr. Michael Welner testifying before the Pennsylvania State Legislature on March 18, 2002 regarding mental retardation. File:497H101743.D

Dr. Michael Welner testifying for defense in People v. Teon Williams p. 10. People question Welner about why defense attorneys hired him. File:Teon Williams p. 10 - Dr. Michael Welner testimony for defense.pdf

Decision in People v. Teon Williams p. 10. People question Welner about why defense attorneys hired him. File:Teon Williams p. 10 - Dr. Michael Welner testimony for defense.pdf

Michael Welner is a forensic psychiatrist. This transcript contains Dr. Welner's testimony before the Pennsylvania State Legislature on March 18, 2002 regarding mental retardation. File:X22

If you have a transcript or relevant document for a specific PE article you can upload it to the article by simply clicking "Attach a File" on the section where it belongs.

### B. Create a new PE article and attach your files

If you have files to contribute, but can't find a specific page in PE where they belong, you can create a new page in seconds. It only takes four simple steps:

#### Step One: Search



search

New Expert Witness

Search Go to page

Advanced Search

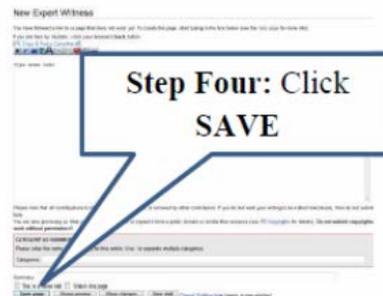
#### Step Two: Create the page:

Create the page **"New Expert Witness"** on PE!  
Advanced Search

After verifying that the page (or one very similar) does not exist - click the **RED** link.

#### Step Three:

Type some text into the blank page. The page can be as simple or complex as you'd like. You can also cut and paste text from any word processor directly into PE.



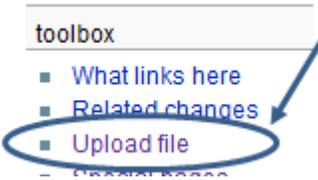
New Expert Witness

This page has not yet been created. You will get a blank page and you will be able to edit it later.

You can also cut and paste text from any word processor directly into PE.

**Step Four: Click SAVE**

## C. Upload files without attaching them to an article



From the "toolbox" on the left side of PE you can always upload a file. But uploading from here will not attach the file to a specific article. For really busy prosecutors this is an easy way to help, and PE's search engine will always find the files.

The downside to uploading files without attaching them to a specific article is that the files merely stand on their own without a supporting page, or full explanation other than the file description. PE's search engine will find them, but it may cause more search results to appear when another user tries to find the file.

## D. Basic Editing

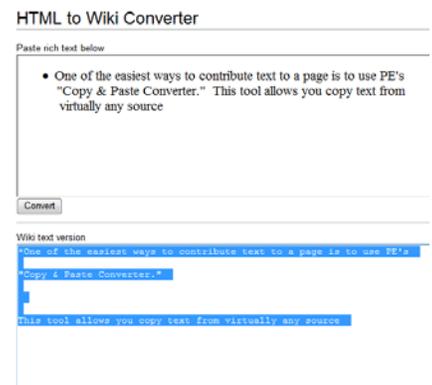
Once you are ready to start editing, just click edit. PE has an editing tool bar similar to the one found in Word and requires almost no computer knowledge. It's simple text. For more advanced editing you can always access the [PE Editing Cheatsheet](#). This will give you all of the shortcuts you need to make the page look the way you want.

### *Remember:*

- **You can't break/destroy/ruin anything in PE!**  
Each page has a complete history that can be rolled back, so don't worry, have at it!
- **It's just text**  
We've experimented with different tools to make editing easier. But we have found that the more things the editing tool bar does, the more of a hindrance it is for end users. The most important thing to remember is that edits are no more than text on a page. Virtually any question you could have about editing is answered in the one-page [PE Editing Cheatsheet](#).
- **Try the Copy and Paste Converter**

One of the easiest ways to contribute text to a page is to use PE's "Copy & Paste Converter."

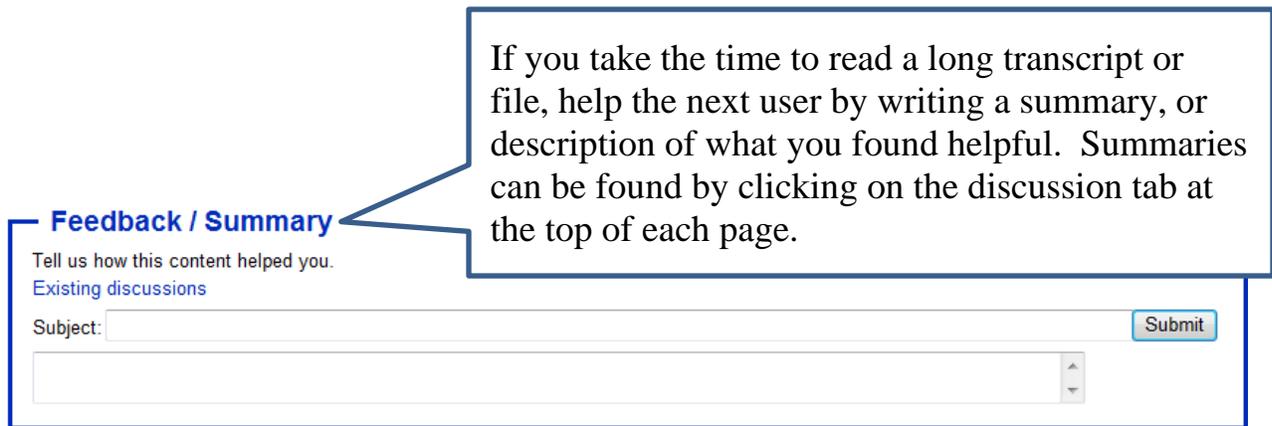
- Click on Special pages in the "Toolbox" on the left hand side of any page
- Select [HTML to Wiki Converter](#) under "Other Special Pages"
- Copy text from virtually any source
- Paste it into the box on the top
- Click convert
- The original text is converted to the format used by PE (i.e. wiki-text).



## E. Small and easy ways you can help

### 1. Providing Feedback and Summaries to files

Although we're working on bringing a certain level of artificial intelligence to PE through LAW (covered below), it's humanly impossible to provide in-depth summaries for all the files on PE. One of the best, and easiest, things you can do if you take the time to read a file is write a short summary about what you found helpful. This will provide a road map for the next user who looks at the file:



The screenshot shows a form titled "Feedback / Summary" with the text "Tell us how this content helped you." and a link for "Existing discussions". There is a "Subject:" label followed by a text input field and a "Submit" button. A callout box points to the form with the text: "If you take the time to read a long transcript or file, help the next user by writing a summary, or description of what you found helpful. Summaries can be found by clicking on the discussion tab at the top of each page."

### 2. Adding Categories and Tags



The screenshot shows a form titled "CATEGORY ASSIGNMENT" with the instruction "Please enter the name of a category for this article. Use ; to separate multiple categories." Below this is a "Categories:" label followed by a text input field containing "CDAA;NAPC;Publications".

Categories and tags help keep PE organized, and are also very helpful when researching because you can always click the categories at the bottom of each page to find similar content.



The screenshot shows a form titled "Tags:" followed by a text input field and an "Add" button.

## VIII. Personal Tweaks

### Preferences



**My Preferences:** Depending on your "preference," you may want to immediately make two tweaks to the way PE works for you.

1. **Search Options:** if you would like decisions to be returned for all of your searches, make sure you have a check box next to Decision:



2. **Editing:** Here you can choose which PE editor you'd like to use.

## IX. Playing / Experimenting are the best ways to learn PE

There's no question - PE contains a lot of information, and has countless cool features. This Nutshell only cracks the surface of what PE has to offer. But whether you're looking for the latest development out of the U.S. Supreme Court or the latest development in tablet computing, PE contains something for every prosecutor. And it will continue to grow as prosecutors across the country begin contributing and collaborating. Take a few minutes to sign-in, add PE to your "favorites/bookmarks" and explore!

**PE Help is always available. Just send an e-mail to [PE-Help@nypti.org](mailto:PE-Help@nypti.org)**

You can access this Nutshell anytime: [PE in a Nutshell](#)

## X. Spread the Word

The best part of PE is the more than 5,500 dedicated users working for justice every day. Please help grow the PE community by spreading the word. Because Prosecutors who Enforce laws should have access to free law, and PE is there to help.

Prosecutors can create an account by going to [www.MyProsecutor.com](http://www.MyProsecutor.com) and clicking on "Request an account." Only official office/agency email addresses are permitted.

**[www.MyProsecutor.com](http://www.MyProsecutor.com)**

# Multitasking Ethics and Technology

## Article By:

Sean Smith, New York Prosecutors Training Institute, Albany, New York (30981) and Patrick Muscat, Wayne County Prosecutors Office, Wayne, Michigan (2)

This article was adapted for PE from an article that will appear in NYPTI's [Empire State Prosecutor](#).

## Introduction

[A]ll attorneys must educate themselves about technology in order to meet their ethical obligations to clients. "The notation of just hanging a shingle and not taking time to understand the technology runs afoul with the (ethics) rules." Federal Magistrate Judge [John Facciola](#), from the District of Columbia, during *E-Discovery for Federal Government Practitioners* jointly produced by the Electronic Discovery Institute and Georgetown Law CLE, see: <http://www.law.com/jsp/lawtechnologynews/PubArticleFriendlyLTN.jsp?id=1372060733624>

Rule 1.1 of the ABA Model Rules of Professional Conduct: "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."

According to Facciola, competency now requires "a fundamental understanding of the way information is produced." This entails: 1) some understanding of the information systems you and your client are relying upon; 2) knowing your own limitations; and 3) if you don't understand, have someone at your side, i.e. an expert, who does. [http://www.edupdate.com/webinars\\_podcasts/](http://www.edupdate.com/webinars_podcasts/)

## An Ethics Requirement for Technical Competence?

Last summer, the American Bar Association (ABA) has adopted several amendments to its Rules of Professional Conduct that attempt to bridge the gap between technology and lawyers. What does this mean to you? In a nutshell, all lawyers are now required to be technologically competent under the model rules, and "keep abreast" with technology.

Smart Phone, Laptop, and Tablet users should be aware of a new section (c) to Model Rule 1.6 - Confidentiality of Information:

*A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.*

Why? What happens when you lose your phone, misplace it, or leave it on the prosecution's table when you take a bathroom break? If it is not protected by a password, anyone who picks up your phone will have easy access to all your e-mail, notes, and any other data that's in your phone. For many of us, our phone contains an in-depth look at our lives - activities, contacts, friends, current projects, music, books, and more. The comments to the new section state that if you take "reasonable efforts" to secure data, you may not be in violation of the new rule. What's the take away? Make sure you protect your computer, smart phone, and tablets with some kind of password so if your device falls into the wrong hands, your data has some kind of protection.

## Don't think anyone would touch the information on the prosecution's table?

In September, a high profile defense attorney in upstate New York was found guilty of violating the [NYS Rules of Professional Conduct Rules 3.3\(f\)\(2\)](#) and Rule 8.4. (h); [In the Matter Terence L. Kindlon, \(3rd Dept 9/27/2012\)](#). Specifically the attorney was found guilty of violating:

Rule 3.3: Conduct Before a Tribunal (f)(2): *engage in undignified or discourteous conduct;*

Rule 8.4: Misconduct (h): *engage in any other conduct that adversely reflects on the lawyer's fitness as a lawyer.*

So, what did the lawyer do?

During a recess in a homicide trial, and while the prosecutor was outside the courtroom, respondent viewed, handled and **photographed** a document that was on the prosecution's table. Respondent did not seek, nor was he ever granted, permission by the prosecutor to examine, handle or photograph the document. See: [the decision](#).

[But according to press reports](#), during a break, Kindlon noticed a document with a defense firm logo sitting on the Prosecutor's table. It was a copy of an email exchange between the Prosecutor and a former prosecutor who was now working at a private law firm. Kindlon took a photo of the document (most likely on his cell phone). After the trial, Kindlon sent it to the managing partner of the law firm. According to an article in the New York Law Journal, [Criminal Defense Lawyer Censured for Photographing Documents \(9/28/2012\)](#), the whole incident was caught on the court's surveillance camera.

Had this incident involved information on the prosecutor's cell phone instead of a paper document, under this new ethics rule, the prosecutor may have also been in violation of the ethical rules.

For more information on the ABA's Amendments to the Model Rules log into Prosecutors' Encyclopedia (PE) (<http://www.NYPTI.com>) and see:

- [NYSBA Journal November/December, 2012 Latest ABA Guidance: Old Wine in a Tech-Ethics Bottle](#)
- [ABA Resolution Addresses Lawyers and Technology](#)
- [ABA Adopts Ethics Policy on Lawyers' Use of Technology - LTN](#)

# Competence Is More Than Just Keeping Abreast of the Latest Technology, IT Means Using It Appropriately Too

There is no question - that some of today's technological advancements are truly incredible tools that can help you with your cases. But, like any other tool, they can quickly become a dangerous weapons if not used properly: think DWI/DUI and the automobile; medicine in the hands of a child; a nail gun in the hands of a non-carpenter.

At the last conference you attended - how many of the speakers made you suffer though a mine field of "Death by PowerPoint/Keynote?" Or maybe they had no slides, and instead read through complex cases covering strange fact patterns or new facets of law. They clearly knew the topic they were covering inside and out, but you couldn't pay attention because their message was lost in the dense fog of their presentation.

If you've ever done a PowerPoint or Keynote presentation, think about how you prepared:

- ◇ Did you have a theme?
- ◇ Were you telling a story?
- ◇ Did you spend more than 90 hours preparing your slides so they conveyed your message?
- ◇ Did your presentation support your theme, theory, and story, or was it a convoluted collection of slides covered in complex text?
- ◇ Was your presentation ethical?

## Learn From the Pros, Not Just Prosecutors:

We (the authors) have an unspoken rule that whatever we create or do, the other is welcome to use and make their own. Do we steal and pillage from each other? Of course we do, but because every case or presentation is different, it's more like borrowing an idea to propel it to the next level.

In addition to learning from each other, attending CLE presentations, or reading all the articles you can, it's crucial to read and learn from some of the pros that have made delivering excellent presentations their life's work. Typically, no matter what the book is, you'll learn something if you have an open mind.

[John Wolfstaetter](#), Chief of Vehicular Crimes in the New York County District Attorney's Office, has an incredible ability to translate and apply some of the best techniques found in business books into simple concepts prosecutors can use in almost any case. One book he recently recommended was: *The Presentation Secrets of Steve Jobs: How to Be Insanely Great in Front of Any Audience*. It doesn't matter if you're PC or Mac, it's a great read!

### ***Presentation Secrets of Steve Jobs Author's Slides:***

**[The Presentation Secrets of Steve Jobs - Carmine Gallo](#) from [Carmine Gallo](#)**

One thing that's pretty clear from the book is that the technology used to give a presentation is irrelevant. Before Jobs gave incredible presentations using Apple's Keynote to promote the iPhone, he used PowerPoint (Keynote wasn't released until 2003) to promote the first iPods in 2001.

### ***It's 1,000 Songs in Your Pocket!***

When Jobs gave a presentation he hardly used any text at all. Instead he used powerful visual images as he spoke about the products he was promoting. In fact, a Job's presentation typically had less than 40 words in the entire presentation.

There's no doubt Jobs was passionate about his products. But he wasn't necessarily driven by money, instead he was motivated by an ideal to help change the world and make it better with technology. Like Jobs, most of us in the field of prosecution or criminal justice are not inspired by making money, but instead we are driven by justice, a keen sense of right and wrong, and a desire to make our communities better places to live.

If you are interested in tips from the business world, tips from the trial consultants or trial presentation software see John Wolfstaetter's technology handout in PE: [Hollywood in the Well The Visual Trial - Wolfstaetter](#)

## Technology or Not, Prosecutorial Misconduct is Prosecutorial Misconduct

When we get excited about using new tools, it's very easy to get carried away and lay out every detail in great length because it's easy to create slides. But a recent case from the state of Washington (see discussion below) should serve as a yellow flag for the simple proposition that: prosecutorial misconduct is prosecutorial misconduct, and the medium where it occurs is irrelevant. In fact, it doesn't matter whether you violate the *Golden Rules* through oral statements, unprofessional conduct, a *Brady* violation, or with a visual display. As a prosecutor, you **must** be ethical.

In this article we are specifically focusing on making arguments to the jury in summation. In New York, we look to [New York Rules of Professional Conduct](#) and specifically [Rule 3.4 \(d\)\(3\)](#):

***(3) assert a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused but the lawyer may argue, upon analysis of the evidence, for any position or conclusion with respect to the matters stated herein;*** (Emphasis Added)

New York Prosecutors may also look to: [The Right Thing - Ethical Guidelines for Prosecutors - DAASNY](#).

Now, let's take a quick look at the [National Prosecution Standards \(NPS\)](#), specifically, [6-8.2 Personal Opinion](#)

*In closing argument, a prosecutor should **not express personal opinion** regarding the justness of the cause, the credibility of a witness or the **guilt of the accused**, assert personal knowledge of facts in issue, or allude to*

any matter not admitted into evidence during the trial. (Emphasis added)

And from the Commentary to NPS 6-8.2:

*Faced with closing argument, the final opportunity to espouse the people's theory of the case, **prosecutors need to be keenly aware of the limitations on the methods available to them for that use. Closing arguments have been the ticket back to the trial court from many appellate courts** that have uttered the words "prosecutorial misconduct" in relation to words uttered by the prosecutor. (Emphasis Added)*

Finally, we take a quick look at the [American Bar Association's Prosecution Functions Standards](#). When it comes to Closing Statements/Summations become familiar with: Standard 3-5.8 Argument to the Jury:

*(a) In closing argument to the jury, the prosecutor may argue all reasonable inferences from evidence in the record. The prosecutor should not intentionally misstate the evidence or mislead the jury as to the inferences it may draw. (b) The prosecutor should not express his or her personal belief or opinion as to the truth or falsity of any testimony or evidence **or the guilt of the defendant**. (Emphasis added). (c) The prosecutor should not make arguments calculated to appeal to the prejudices of the jury. (d) The prosecutor should refrain from argument which would divert the jury from its duty to decide the case on the evidence.*

## What Can't Be Done Verbally Can't Be Done Visually Either:



In *the Matter of the Personal Restraint of Edward Michael Glasmann*, [286 P.3d 673](#) (10/18/2012), the Supreme Court of the Washington, (5-4), ordered a new trial because the prosecutor's misconduct was "flagrant," and "ill intentioned." One particular PowerPoint slide in the prosecutor's summation presentation really pushed the court over the edge. The slide had the defendant's mug-shot with the words, "Guilty!, Guilty!, Guilty!" superimposed over the defendant's mug-shot.

The decision goes on to point out:

*A prosecutor could never shout in closing argument that 'Glasmann is guilty, guilty, guilty!' and it would be highly prejudicial to do so. Doing this visually through use of slides showing Glasmann's battered face and superimposing red capital letters (red, the color of blood and the color used to denote losses) is even more prejudicial.*

The thrust for the court's opinion came from a specific slide that the prosecutor created and displayed during his closing argument. The court did not find the use of PowerPoint in delivering a summation to be objectionable, but rather objected to the content of several specific slides that the prosecutor created in PowerPoint. And under almost any reasonable reading of any set of ethics rules this demonstrative would be considered way beyond permissible bounds.

The opinion in *Glasmann*, is an illustrative example of what not to do in a PowerPoint summation, or in any other demonstrative aid, be it a flip chart or chalk board. Had the prosecutor followed the recommendations contained in *Visuals for Today's Prosecutors*, published by [NDAA](#), the outcome in *Glasmann* would have been far different. *Visuals For Today's Prosecutors* provides several examples for creating demonstrative aids or slides to use in a PowerPoint summation based upon the evidence admitted during the trial that points to the defendant's guilt. These examples are all very different from plastering guilty over a picture of the defendant because they use and incorporate the specific evidence from the case to reach a conclusion. They are not based out of "personal opinion," but instead upon the evidence admitted at trial.

While the *Glasmann* court went out of its way to talk about the impact of electronic visuals, citing, [Through a Glass Darkly: Using Brain Science and Visual Rhetoric to Gain a Professional Perspective on Visual Advocacy](#); the decision boils down to an improper use of a visual on a PowerPoint slide in which the prosecutor expressed his personal opinion of the defendant's guilt and several specific examples of prosecutorial misconduct throughout his summation. In fact, the case has already been distinguished. In *State v. Lindsay and Holmes* a Washington state appellate court distinguished the level of prosecutorial misconduct by pointing to the three strikes found by the court in *Glasmann*:

1. The prosecutors repeated assertions of the defendant's guilt;
2. Improper exhibit;
3. Statement that jurors could acquit only if they believed the defendant.

A 2009 case from the California is another illustrative example of a PowerPoint slide going too far because it had nothing to do with the case. There, the image used was not in evidence and according to the court, "misrepresented the 'beyond a reasonable doubt' standard". In *People v. Katzenberger*, [178 Cal.App.4th 1260](#) (2009) the prosecutor during summation displayed a presentation where:

*[S]ix different puzzle pieces of a picture come onto the screen sequentially. The picture is immediately and easily recognizable as the Statue of Liberty. The slide show finishes when the sixth puzzle piece is in place, leaving two rectangular pieces missing from the picture of the Statue of Liberty - one in the center of the image*

*that includes a portion of the statue's face and one in the upper left-hand corner of the image. ... The prosecutor went on to tell the jury that "[w]e know [what] this picture is beyond a reasonable doubt without looking at all the pieces of that picture. We know that that's a picture of the Statue of Liberty, we don't need all the pieces of the [sic] it. And ladies and gentlemen, if we fill in the other two pieces [at this point the prosecutor apparently clicks the computer mouse again, which triggers the program to add the upper left-hand rectangle that includes the image of the torch in the statue's right hand and the central rectangle that completes the entire image of the statue], we see that it is, in fact, the [S]tatue of [L]iberty. And I will tell you in this case, your standard is to judge this case beyond a reasonable doubt." The prosecutor argued such standard was met by the evidence.*

While displaying the Statue of Liberty is certainly patriotic, it's not relevant to the case, nor is it evidence unless you're prosecuting a crime that took place on Ellis Island.

If you're interested in the state of the law throughout the country on visuals and trial presentations please take a look at: [Simplifying Technology/10 The State of the Law](#), and if you know of a case that's not listed please help us by adding it to our list. Most courts have come to encourage the use of litigation technology because it speeds up the trial. And there are even guidelines from the [Federal Judicial Center: Effective Use of Courtroom Technology: A Judge's Guide to Pretrial and Trial](#).

So what's the bottom line or take away point from these cases? It's simple:

## **If you can't say it, don't display it!**

The next time you need to create a visual presentation think of us, **Sean & Pat**:

**S**imple;  
**E**ffective;  
**A**rtful;  
**N**o-Nonsense;  
**P**resentations;  
**A**re;  
**T**ops!

There are a number of proven PowerPoint templates in PE. Use them, tweak them, make them your own, and send us back an idea or two: [PowerPoint Templates](#). In addition to templates, if you need to know how to do almost anything in PowerPoint see: [Simplifying Technology/11 PowerPoint](#).

Finally, if you are really curious about seeing the slides from *Glasman* see: [File:Glassman-slides-Wash2012.pdf](#), but note the file is a PDF of poor quality, three slides per page, copied multiple times then scanned for the record downloaded from the Supreme Court of Washington's website.

Feel free to e-mail us if you're looking for advice or a suggestion on how to do something visually: [Sean.Smith@NYPTI.org](mailto:Sean.Smith@NYPTI.org) and [PMuscat@co.wayne.mi.us](mailto:PMuscat@co.wayne.mi.us).

Good Luck!

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# Arizona Prosecutors Manual - APAAC

## PDFs of Manual Chapters

Each link below will take you to PDF Chapter in PE. From there click on "**Cases in Document (LAW)**" for hyperlinks to virtually all the cases in these chapters.

[01 - Defendants Statements](#)

[02 - Identifications](#)

[03 - Search and Seizure](#)

[04 - Search Warrants](#)

[05 - Other Acts](#)

[06 - Plea Agreements](#)

[07 - Trial Preparation](#)

[08 - Voir Dire](#)

[09 - Opening Statements](#)

[10 - Direct Examinations](#)

[11 - Cross Examination](#)

[12 Closing Argument](#)

[13 Rules of Evidence.pdf](#)

[14 - Priors for Enhancement](#)

[15 - Objections](#)

[16 - Insanity](#)

[17 - Rule 11 - Incompetence of Defendant](#)

[18 - Rule 26 - Sentencing](#)

[19 - Probation Revocation](#)

[20 - Post Conviction Relief](#)

[21 Victims Rights](#)

[22 - Grand Jury](#)

[23 - Defenses](#)

## Thank you **APAAC**

APAAC began as the [Arizona County Attorneys' Association](#) which was created in 1973. The Arizona Prosecuting Attorneys' Advisory Council (APAAC) was then created by the Arizona Legislature in 1977. Although APAAC provides a variety of services to prosecutors, the primary mission of APAAC is to coordinate and provide training and education to prosecutors throughout Arizona. APAAC currently serves over 819 full-time state, county and municipal prosecutors.

The Council is composed of twenty-three (23) members, including the attorney general, the fifteen elected county attorneys, five municipal prosecutors, a representative of the supreme court, and the dean of one of the state's law schools.

<http://apaac.az.gov/>