Using Trial Tools in the High Tech Courtroom

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Ellen serves as the Law Practice Management Coordinator for the Pennsylvania Bar Association. In that capacity she assists PBA's members with management issues and decisions on the business side of their practice, including areas like technology, financial management and profitability, human resources, marketing, risk management, setting up a practice and so forth. PBA members are encouraged to contact Ellen through the 800 “Hot Line” at PBA headquarters, (800-932-0311 x2228) or through email (lawpractice@pabar.org).


Ellen holds the designation of Certified Legal Manager through the Association of Legal Administrators (ALA), the credentialing body for the CLM degree. Of the 11,000+ members of the ALA, approximately 260 are certified legal managers. Ellen was one of the first 20 in the nation to have achieved this designation. She holds a Certification in Computer Programming from Maxwell Institute, and a Certification in Web Site Design and a B.A. from Temple University.

Ellen managed inside law firms for twenty years. Most of that time was spent in a mid-size (35+ attorney) firm environment. She launched her consulting practice in 1998, and joined the Pennsylvania Bar Association in 1999.

Ellen is an associate member of the American Bar Association, and its Law Practice Management and General Practice & Small Firm sections. She was a member of the Association of Legal Administrators for over 20 years, and founded the Independence Chapter. She is a frequent author and speaker on law firm management issues on a national level.
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Mr. Siegel is the founder and President of Integrated Technology Services, LLC, a consulting service for attorneys that assists litigators improve their workflows. He is also the principal of the Law Offices of Daniel J. Siegel, LLC, a law firm with offices in Havertown, Pennsylvania and York, Maine, who provides appellate and trial court writing services to attorneys, as well as ethical and technological guidance. He is the author of *The Lawyer's Guide to CaseMap* and *Android Apps in One Hour for Lawyers*, both published by the American Bar Association Law Practice Management Section, and the author of *Changing Law Firms: Ethical Guidance for Pennsylvania Law Firms and Attorneys*, published by the Pennsylvania Bar Institute. He authors the “Technology” column in *The Philadelphia Lawyer*, quarterly magazine of the Philadelphia Bar Association; a bimonthly column on the intersection of law, technology, ethics and law practice for *Pennsylvania Law Weekly*; and the “Tech Brief” column in *Trial*, monthly magazine of the American Association for Justice. Mr. Siegel serves on various Bar Association committees, and is a member of the Editorial Boards of *The Philadelphia Lawyer* and *The Legal Intelligencer*. He received his law degree from Temple University in 1984 and his bachelor’s degree from Franklin and Marshall College in 1981.
Mind Meld
How to understand legal minds to defeat tech fears
By Joe Dysart

While some old-school attorneys would rather camp out in anoraks at Burning Man than adopt new technology, professional law technology implementers say it doesn’t have to be that way. Understand the mind of the attorney, they advise, and chances are you can tame the technophobic beast.

“Lawyers seem far more resistant to technology than people in the general business community,” says Bruce A. Olson, a longtime litigator and president of Onlaw Trial Technologies, based in Appleton, Wis. “In some cases, they see no incentive to achieving the increased productivity that properly deployed technology can offer.”

Daniel J. Siegel, a lawyer and president of Integrated Technology Services in Havertown, Pa., has also seen his share of legal technology implementations: “It’s the nature of the profession. We all think we’re smart and our way is right. So it’s hard to change.”

Over the years, Olson and Siegel have learned to bob and weave through the toughest of tech-resistant thickets. Speaking at LegalTech New York 2012, they said that along the way they’ve acquired a few tactics that worked when their only welcome was a pair of folded arms and a sneer. The tactics include:

- **Wean the digital-wary from paper.** “Not having paper in front of them scares lawyers,” Siegel says. More than most professionals, attorneys need to be convinced that with pro-level computer backups and redundant systems, digital documents really are as permanent as data printed on dead trees.

- **Look past age stereotypes.** While we’re all fond of the befuddled grandpa who calls to say he just sent you an email, don’t assume graybeards will be the most difficult clients. Indeed, Olson’s experience is that some of his toughest customers are young attorneys who see new technology as a needless time suck.

- **Equate tech training with law training.** Attorneys sometimes see the light after implementers ask them to see technology as another competitive skill that needs to be mastered. “After all, we are all trained to be lawyers and trained for other skills,” Siegel says.

- **Try baby steps.** For world-class technophobes, breaking down a technology migration into a series of easy-to-master steps sometimes works, Siegel says.

- **Don’t forget pressure.** Fortunately, attorneys tend to be a competitive lot. During a recent implementation of a new document management system, Olson says, he was able to bring his last holdout on board by simply pointing to other attorneys who’d already mastered the change. “Once that was established—and the positive reasons for change could be demonstrated along with the successful use of the product—the recalcitrant lawyer was persuaded to follow suit.”

- **Get top-down support.** Job one for nearly any type of successful change, top-down support is still too often overlooked or not emphasized enough in tech transitions. “If the bosses won’t use the technology,” Siegel explains, “then neither will their staff.”

- **Charm the staff.** Implementers can also often make an end-run around the tech-stodgy by charming support staff. “If they, for example, see the benefits of a paperless office in day-to-day work, they will typically bring along the reluctant attorney over time,” Olson says.

- **Don’t capture a Titanic-in-waiting.** Although a tech implementer is by definition stout-hearted, there are instances when a project is just a suicide mission. If you’re ever invited to squire an obviously doomed tech migration, find the most polite way to run for your life. “Wholesale changes without customization and without a plan and without a training program won’t work,” Siegel says.

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WHEN OLD DOGS LEARN NEW TRICKS:
COURTROOM PRESENTATION TOOLS
AND THE RULES OF EVIDENCE

Ellen Freedman, CLM
Law Practice Management Coordinator
Pennsylvania Bar Association

and

Donald J. Martin, Esquire

There's a new generation of computer-based tools which are increasingly being utilized by trial lawyers. Some are behind-the-scenes tools, designed to enhance the ability of the lawyer to map out case strategy, build timelines of events, and even produce trial books. Other tools are designed to organize and present evidence in the courtroom. These latter tools are often referred to as visual aids or presentation tools. But they are much more sophisticated that the enlargement-on-foam-board tools of yore. They include such tools as computer animation, which visually represent an expert's testimony, projected images of photos, documents, charts and graphs, deposition testimony which is highlighted and annotated, or which combines video and text and is indexed for precise recall by the attorney during a witness testimony.

These high-tech courtroom presentation and litigation tools require a fair amount of computer expertise, a commitment of firm resources, and a lot of detailed preparation prior to and during trial. Why are trial lawyers embracing these tools in increasing numbers?

More effective. Studies have consistently shown that visually reinforced information remains easier to understand and remember, and is in fact up to 650 times more effective than oral argument alone. Today's jurors are largely a television generation. Even the baby boomers who preceded the computer age are still used to viewing a television screen. Therefore, computer-based presentation tools are more appealing and effective to today's jurors.

Greater impact. The use of high-tech visual aids makes a great impact on the client as well as the juror. John Brown, a trial lawyer with Philadelphia-based Cozen & O'Connor, has frequently made use of animation. His reason for using it is "that for most folks, 'visuals' are a major factor in memory retention — this is a major factor for jurors in particular who have to digest a concentrated stream of information in a short period of time, delivered by attorneys and experts who have 'lived' the case. I think all the clients that have authorized the use of animation technology for 'their cases' have been convinced at the end of the process that the
combination of ‘stills’ and animated sequences are the most effective means of communicating ‘their point of view’. When presented in the courtroom on a screen and left on the screen during the examinations of witnesses (with witnesses referring to the images during their testimony), the themes that we try to present through the image selection are ‘burned’ into the minds of the jurors and they really do ‘get it’. As far as the case presentation and theory, they associate everything they learn through the lay and expert witnesses with the visual image, and it becomes a reminder that we can attach the major themes of the case to.”

**Best first impression.** Trial lawyers have learned that appearances and first impressions count in everything they do. In trials, first impressions are magnified because of procedural rules that limit the manner in which one can convey information. (More on that later.) As a result, attorneys often use visual aids to help them create a favorable impression and “sell” their case.

**Save time and money.** Trials progress more quickly when visual aids are used. They provide clarity, and enable concepts to be presented and grasped more quickly. As a result, time and money are saved for the courts, attorneys, and clients. And when visual aids are used during mediation, issues emerge earlier, helping the parties assess risks and benefits more quickly.

The most popular presentation tool is Microsoft’s PowerPoint. It comes bundled as part of the Microsoft Small Business Edition or Professional suite of software. It is very easy to learn and use. It helps attorneys avoid the “11th hour panic” concerning preparation of or modification of exhibits, particularly photographs. Even if it’s over a weekend, the attorney can create his/her own powerful exhibits, or modify existing exhibits, with relative ease. It’s a tool which is equally effective for zoning and planning commission hearings, tax assessment appeals, pretrial matters, and mediations. In fact, it’s especially good for mediations because the materials are easy to present, can be viewed by all parties together, and all the materials are kept in one location.

There are many add-on or “plug-in” packages which enhance the innate capabilities of PowerPoint. Slides & Sound Plus ($40) adds over 100 transitional affects, and integrates many forms of media including pictures, photos, movies, and voice-overs easily. Astound Presentation 7.0 ($289 — [www.astound.com](http://www.astound.com) ) also beefs up the power of PowerPoint. ANIX ($140 — [http://www.persuasive-arts.com/about-general-fr.html](http://www.persuasive-arts.com/about-general-fr.html) ) adds animations, enhanced highlighting, plus the ability to make changes to presentations “on the fly.” For WordPerfect users, the Corel Presentations 9 suite of products offers functionality similar to PowerPoint.

Harvard Graphics ([www.harvardgraphics.com](http://www.harvardgraphics.com)) offers a suite of products, including Easy Presentations ($70), Advanced Presentations ($199) and Instant Charts ($30). Their software has always been recognized for reliability and robust
feature sets. When the data which must be visually displayed consist of numbers, trends, or other information which are best presented in graphic mode, Harvard Graphics is one of the best tools to use.

A very powerful tool is Sanction 1.7 Trial Presentation ($395 — http://www.datacompanies.com/html/products/sanction.asp ). This software handles digital video, and enables establishment of a link from every line of text in a deposition to a searchable location on the video tape. It is mostly used for impeaching testimony. One can also make an arrangement of clips in advance based on issues, ready for playing on cue.

Using Sanction requires quite a degree of technical savvy. In most cases a professional outside consultant is retained to assist the firm in setting up the various links and arrangements. The firm would also likely use the consultant during trial to set up and operate the equipment, as an integral part of the trial team.

Another powerful tool is TrialDirector ($695 — www.indatacorp.com ). This software provides the ability to project multiple exhibits side-by-side for comparison, with on-screen annotation tools and multiple zoom capabilities. There are in fact so many litigation-oriented presentation tools, it is impossible to reference all in the space of one article.

Finally, custom video animation is used to visually present complex and comprehensive information which would normally be impossible to view or comprehend with the naked eye. For example, underground construction in a liability case, or the inside workings of a mechanical mechanism in a patent case.

Of all the courtroom presentation tools, custom animation is certainly the most costly. Prices begin at about $10,000 - $15,000, and can go as high as $100,000 depending on the complexity of the case, and whether there’s something on which to base the visual creation upon (photographs of an accident scene and site surveys, for example) or not. Yet in spite of their cost, attorney John Brown states confidently, “I have not had any disappointed clients who feel the money has not been well spent.”

Animations are not just for use in the courtroom. They are highly effective tools to assist the trial team in better preparing for their case. They help identify facts that don’t make sense. Often they are an important tool to help settle a case early on, as they provide clarity of the facts which are supported by scientific data.

Attorneys typically have one of two reactions when shown these available technologies. First, they believe that anything which appears on a computer screen becomes an acceptable exhibit, and instantly credible to a juror. Not true. Second,
they presume that there is no way to authenticate the evidence created by use of these tools. Again, not true.

Most of this presentation software gives trial lawyers a new, faster way of doing what they have done for years. The computer and projector are, in part, a substitute for the blackboard, the chart, and enlarged documents. The rules for the use of these items are well established, and will be applicable to similar courtroom presentations.

They must meet the tests of relevance, avoiding prejudice and waste of time under Pennsylvania and Federal Rules of Evidence 401, 402 and 403. Permission to use them is within the trial court's discretion. Charts have been used to illustrate a complex conspiracy, Commonwealth v. Rickabaugh, 706 A.2d 826 (Pa. Super. 1997), and to illustrate the process of prisoners through police headquarters in a case asserting that the police were bribed to expedite the release of two alleged mob hit men and keep their bail low. Commonwealth v. Trudell, 371 Pa. Super. 353, 538 A.2d 53 (1988). In complex cases the Court has allowed the chart to be exhibited throughout the trial. Commonwealth v. Cullen, 340 Pa. Super. 233, 489 A.2d 929 (1984).

When visual aids were blackboards, courts required that they be shown to the judge and opposing counsel before being displayed for the jury. Davis v. Haldeman, 150 F. Supp. 669, 672 (E.D.Pa. 1957). Judges prefer, and often order, that displays be provided prior to trial to avoid having objections interrupt the presentation of the case. E.g., United States v. Bloom, 78 F.R.D. 591 (E.D.Pa. 1977) Even in a case in which it was conceded that the charts were accurate, their last minute presentation before closing was sufficient to deny their use. United States v. LaBar, 521 F. Supp. 203 (M.D.Pa. 1981).

None of these cases involved computer presentation, but their rules should apply. Make sure your presentation is accurate and supported by the evidence. Provide a printed version to your opponent during discovery, if requested, and include it with your pretrial memorandum. Have the printed copy with you in court for the record. Submit it as an offer of proof if your presentation is refused.

Technology sometimes makes lawyers overlook basic rules of courtroom procedure. Even when a document is admissible it must actually be received in evidence and the Court's permission obtained before it can be shown to the jury. Commonwealth v. Gease, 548 Pa. 165, 696 A.2d 130 (1997). I have seen lawyers fail to object to their opponent putting enlargements of documents on an easel and questioning a witness about them before they have been admitted. This is just as objectionable when a computer image is displayed on a screen.
This principle and Rule of Evidence 613 means that “instant impeachment” with transcript, audio and video, is not possible if an objection is made. The witness is entitled to be asked about the prior testimony and to have an opportunity to explain it before the transcript is admissible. The state and federal rules differ on the timing of this, but their effect is the same.

While computer animations have some resemblance to films or videotapes of demonstrations, they do raise issues that Pennsylvania’s courts have not yet addressed. Anyone preparing or preparing to oppose, an animation needs to read 22 Wright and Miller, Federal Practice and Procedure §5174.1 (supplement) “The ‘MTV Defense’”. The title is enough to tell you the authors’ view of computer animation. They explain that what the lawyer or witness tells an animator is hearsay. They disagree with the analogy to a witness with a chalkboard both because of the impact of animation, and the impossibility of altering the video in the light of cross-examination. Still, computer animation is gaining ground, and is admissible when the animation is properly authenticated.

Pierce v. State, 718 So.2d 806 (Fla. App. 4th Dist. 1997), explains the difference between the use of computer animation as a demonstrative exhibit in conjunction with an expert’s testimony, and as substantive evidence having independent significance. When it is demonstrative, the proponent need only show that the evidence would be helpful to the trier of fact, the witness using it is qualified as an expert, it has a foundation in the evidence, and its prejudice must not outweigh its probative value. On the other hand, when the computer is performing calculations or otherwise presenting a conclusion based on information supplied to it, the animation must meet the test of Frye v. United States, 293 F. 1013 (D.C. Cir. 1923) in state court, and Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993) in federal court. It is best to file a motion in limine to avoid interrupting the trial.

Although gaining ground, use of high tech presentation tools, or visual aids, is still largely limited to those attorneys who are ahead of the curve. As a result, those attorneys have an advantage which enhances their chances of prevailing at trials and settlement conferences. In addition, they are impressing their clients and cementing important relationships. It’s never too late for an attorney to learn to make use of these new tools. Just keep the Rules of Evidence in mind when you do so.

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Feature

Making the Case—Graphics and the Modern Juror

by Nicole Matthiesen

January 2007

It has been said that if you can imagine it you can understand it. As a lawyer, it is your role to help each juror "see" or imagine the case based on your arguments, not your opponent's. This article explains the importance of communicating with visuals in the courtroom, and its effectiveness on modern juries.

As we move further into the 21st century, visual language is increasingly dominating our channels of communication. We need only trace the progression of advertising to observe this phenomenon—from the often entirely text-based ads of the early 20th century to current advertising practices that are reliant on images with little, if any, text at all. We could also compare the text-heavy content of the Internet in its infancy during the early 1990s to Web sites today, rife with imagery while keeping text to a minimum and reducing font size considerably compared to earlier years.

Because of this growing trend, visual communication is shaping our cognitive processes, our imagination and our judgments. Whether we are looking at imagery in a magazine ad, on TV, or on the computer screen, the powerful effect of visuals is changing the way we communicate, interpret information and make decisions about the world around us. Thus, the importance of communicating with visuals in the courtroom, and its effectiveness on modern juries, can no longer be ignored or misunderstood by trial attorneys.

As with many developments involving the use of technology, the legal world tends to be a little slower in embracing this movement towards visual communication. Some judges are reluctant to admit the use of projected graphics in the courtroom, while many attorneys may find their use suspect or superfluous, even an extravagance. However, considering the findings of a study conducted by the Wharton School of Business which compares visual plus verbal presentations to strictly verbal presentations, attorneys and judges may want to reconsider those opinions.

According to the study, presentations using visual language act as an aid in the decision making process. Visual communication helps to explain and clarify a concept or situation, enhancing what's being communicated verbally and emphasizing the important point(s). And if an individual is able to understand a process, situation or transaction and its relevance more clearly, it's going to be easier for that person to make a confident decision about that process, situation or transaction.

In addition to being better informed, the study notes that audiences find that presenters who use visuals are more effective and make a better impression. By using visuals, presenters, such as trial attorneys, can explain and truly educate an audience on a complicated concept. And by being able to create and speak to a visual representation of the concept, the attorney thus gives the impression that he or she has a comprehensive understanding of the matter and comes across as an authority on that matter. Moreover, attorneys who make an effort to educate their jury are viewed as helpful presenters who respect and have confidence in their audience's ability to grasp complex concepts.

What is of the greatest significance to trial attorneys, particularly prosecuting or plaintiff attorneys is that the study found that the use of visual communication promotes group consensus. By using visuals to organize, clarify and emphasize key information and its relevance to the case, attorneys can actually help each and every member of the group to process and structure information in the same way and can even shape their interpretation and perception of the evidence. The entire jury is looking at the same visuals, and this is particularly helpful when a jury goes to deliberate. Because now, at the very least, they are all using the same language and same organizing structure(s) to discuss and think about the case, thereby allowing jurors to more clearly communicate to each other about the information that's been presented to them. And better communication will quite often lead to shorter deliberation time.

We can see how visual communication can accomplish the conclusions set forth by this study by looking at an example of graphics used in the courtroom. In the recent U.S. v. Jeffrey K. Skilling and Kenneth L. Lay case, I worked with the trial team to create visual elements to help the jury understand the complexities of this trial and arrive at the verdict confidently. One of

http://www.abanet.org/lpm/lpt/articles/tch01071.shtml
the objectives in creating the visual presentation was to help the trial team establish the themes of this case. For example, we wanted to communicate to the jurors that there was a consistent disparity between the troubled and fraudulent state of Enron's business units inside the walls of Enron, compared with the "everything's fine" image Lay and Skilling projected outside the walls of Enron to its investing public. As is often the case in white collar litigation, the high-ranking executives' defense was that they were not aware of troubles or fraudulent activity. It was the government's case that these two defendants were well aware of such activity, and that Skilling and Lay chose to mislead the public by misrepresenting to the outside world the troubled financial transactions taking place inside of Enron. To show this, we created a series of standard comparative graphics which were projected onto a screen in the courtroom. The screen is divided in two with a vertical line running down the middle of the graphic—one side comparing information to the other side—to highlight the differences between the information on each side. For this particular case, we labeled the left half of the graphic with the word "Inside" in a red bar across the bottom. On the right half, the word "Outside" was placed in a blue bar across the bottom of the screen. On the "Inside" portion of the graphic, we displayed a document, which had been presented to Ken Lay detailing the major problems EES, a business unit of Enron, was experiencing in 2001. On the "Outside" half of the graphic, we inserted a quote taken directly from Lay's address to the employees/investors at an All-Employee Meeting, during which he told them that EES was doing well and gave no indication of the problems he was aware of that were listed on the document.

This graphic alone was helpful to the jury in several ways. First, by comparing these two pieces of evidence side by side, we showed a clear dichotomy between what the defendants knew, and what the defendants divulged to the public. In this way, the graphic provided a context for the evidence, which would help the jury understand the relevance of the documents and testimony being presented.

In addition, by using such a graphic during opening statement, we established early on the framework for the rest of the trial, an outline of the story the trial team would tell as the case progressed, i.e. Skilling and Lay knowingly misrepresented the financial condition of Enron to investors. We continued to use this type of graphic as a template to give context to other pieces of evidence. Thus, as more evidence was introduced to the trial, the trial team was able to reinforce and reiterate to the jury the recurrence of their theme as well as show a clear pattern of contradiction in statements made by the defendants. Thus, the graphic provided an organizing structure to the jury for the information and evidence that was to come. The jurors would begin to separate in their minds which pieces of evidence belong on which side of the dividing line. And as such, this simple graphic begins to shape how the entire jury will interpret evidence as it is introduced to them throughout the rest of the trial. And come deliberation, the jurors will be using the same organizing structure, the same visual tool and logic, to consider the evidence, which will allow them to discuss and make decisions about the case as a group. Keep in mind, however, that you don't want to go overboard with using the same graphic series over and over—the jury may feel like they are getting hit over the head with the concept. Simple variations on the design or using elements of the template in other graphics will help accomplish the same goal.

This graphic also served to guide the jury to the significant points of the case by identifying the key documents and the significant portions of testimony. This is especially important in a case such as this one in which hundreds of documents were entered into evidence over a 4-1/2 month period of time. And because the jury both hears and sees these key points, they will be able to recall them much more easily than if they were only expressed verbally.

And finally, this graphic, by creating an organizing structure and establishing a theme of this case, developed a consistency in the trial team's story and presentation of facts. Such consistency lends a strong sense of credibility to the team's arguments. For the thematic thread that runs through the verbal presentation of facts is bolstered by the themes running through the graphics, creating a stronger, more coherent story and an unwavering argument.

It sounds simple, and it is. In fact, the point of using graphics in the courtroom is to simplify your case and to help ensure the evidence is unmistakably understood so as to aid the decision making process of the jury. As the example shows, graphics can be an effective rhetorical tool for your argument. We saw that even one graphic can accomplish several objectives in the presentation of your case to a jury. For in its ability to establish theme, patterns of behavior and point to the key documents in the case, the graphic undoubtedly helped the jury to understand the case and relevance of evidence more clearly. Furthermore, by creating a consistent organizing structure for the jury, the graphic helped the trial team recount a credible, coherent story. And finally, this graphic acted as a tool to facilitate the jury's discussions during deliberation, as its structuring of the evidence provided all of them the same point of reference with which to discuss the case.

Visual communication in the courtroom is not only an effective way to communicate, but the expected way to communicate. Because of the ubiquitous manifestation of imagery in our society, modern jurors have come to anticipate the use of visuals as a means of handling and interpreting information. Thus using graphics in the courtroom is not an extravagance, but has become a necessity. We owe it to modern juries, and to our clients, to communicate in a language that will help the jury understand more clearly the terms of our arguments so that they can make well-informed and confident decisions in support of our case.
About the Author

Nicole Matthiesen was the primary graphics consultant for the prosecution in the Enron trial, *U.S. v. Jeffrey K. Skilling and Kenneth L. Lay*. She can be contacted at VisualLex, LLC in New York.
Defusing Powerful Animation

Defense team turns plaintiff's tech to its advantage.

By John Bringardner

On February 4, 2002, at 8:15 p.m., Kevin King was crossing the street in West Hollywood, Calif., on his way home from dinner and a few drinks. Karen Dillon, 44, a Los Angeles attorney who practices at Alschuler Grossman Stein & Kahani, approached the intersection of North Crescent Heights Boulevard and Fountain Avenue in her black Porsche Boxster and made a left turn on a left arrow.

Dillon's car hit King, a 42-year-old costumer for 20th Century Fox, in the intersection. The vehicle was traveling somewhere between 20 and 30 miles per hour, and the impact threw King into the windshield. He was taken to Cedars-Sinai Medical Center, where he spent about 10 days in the intensive care unit, followed by an additional week in the hospital.

King sustained a 5mm subdural hematoma, a left frontal lobe brain contusion, a broken hip, and required surgery to repair broken bones, said his attorney Gerald Klein, of Newport Beach's Klein & Wilson.

THE TRIAL


It looked like a difficult case to defend.

The plaintiff’s medical bills totaled about $200,000 according to the court papers, and he claimed approximately $120,000 in future medical bills for anti-depressant medications and psychiatric and psychological treatment.

Larry Langley and Pamela Shafer, of the Law Offices of Larry Langley, represented Saladino Insurance, and were charged with the task. They called upon San Francisco-based Litigation-Tech to help with trial support.

Michael Skrzypek (pronounced "sha-pek"), senior litigation technician for Litigation-Tech, says the first challenge the team faced was to "counter the prevalent misconception that a pedestrian in a crosswalk always has the right of way." They also recognized the inherent difficulty of defending an attorney driving an expensive sports car. "Not a very sympathetic character to most juries," he conceded.

Klein predicted the case would be a slam dunk. Supporting his beliefs were two mock trials, that both delivered a finding of 90 percent liability for the defendant.

TECH FIRST-TIMER

Langley, a 62 year old Oklahoma-born attorney, is the first to say that he had never used anything more technically complex than a white-board in previous trials. But Langley knew that his competition, plaintiff attorney Klein, had a reputation of being "very technologically oriented."

"Klein had made it clear that he was going to use a lot of video depositions. We had to keep a level playing field," Langley said.

Langley approached Litigation-Tech after hearing about the company through William Smith, a partner at San Francisco's Abramson Smith Waldsmith, who had worked on a case with Litigation-Tech president Tod Brooks. Skrzypek was assigned to the case, but confesses to some initial reservations.

"Langley has a comfortable, folksy personality that some would think wouldn't mesh with a technical opening presentation," recalled Skrzypek.

For his part, Langley said he had much to learn. Both sides used Microsoft Corp.'s PowerPoint for their opening statements. Skrzypek created JPEGs from PowerPoint slides, put them into iData Corp.'s TrialDirector software, and interspersed video clips, exhibits, and photos for the presentation.

But it took the avuncular lawyer a few moments to remember his tech support, recalls Skrzypek.

"For the first 10 minutes or so of the opening, Larry didn't refer to or ask me to start the presentation," Skrzypek said.

"I thought he had decided on the fly to revert to what was comfortable to him, just talking to the jury. But then he glanced over to me and said to the jury, 'Oh yeah, I've got some photos and things to show you about what I've been telling you.'"

"This set the tone for his use of the technology throughout the trial," reported Skrzypek.

"It wasn't slick, but he managed to integrate it into his style, rather than trying to change his style to suit the technology."

The defense technology centered on a TrialDirector database, with hundreds of photos and video clips.
exhibits, dozens of demonstrative graphics and photos, several gigabytes of video depositions, and accident reconstruction animations.

The defense decided to use a rear projection screen that "allowed the jury to see the animation as if they were in the courtroom," says Sitzmann. They set up a large screen for the jury, witness, and counsel tables, and used speakers, with controls integrated into a switcher.

ANIMATION

The clincher, as Langley and Sitzmann tell it, was when defense attorney Klein played an animation of the incident, which was created by traffic accident reconstructionist David King, of MacNiss Engineering Associates, based in Los Angeles.

King used PC Crash software, which helps users create 3-D collision simulations and reconstructions. His animation was used as the cornerstone of the plaintiff's case, Sitzmann explained, and was based almost completely on defendant Dillon's deposition answers.

It was clear that the plaintiff's side thought the recreation would be very damaging to her credibility, he said.

But the defense team managed to defuse the impact of the animation. Langley played the animation in slow motion throughout his cross of the reconstructionist. He also played it during his closing argument, stopping it at key points to question the assumptions the plaintiff used creating it.

"His ability to replay the animation and put our side's spin on it undercut the plaintiff's representation that the animation represented how the accident truly happened," said Sitzmann.

Langley was able to point out how the animation was "totally different from the actual action," said Sitzmann.

For example, the plaintiff was wearing dark clothes at the time of the accident, but in the animation he was depicted as a bright yellow figure. The animation also appeared to be in daylight, with no other cars in sight, when in fact the collision took place in the evening with multiple cars around.

Langley also argued that the plaintiff's counsel had misconstrued critical testimony from defense witness Anthony Stein, president and technical director of Safety Research Associates Inc., based in La Canada, Calif., who was qualified as an expert in pedestrian and vehicular movement and human factors.

Langley was able to convince the jury that Klein had "taken extreme liberties with the actual testimony and opinions of Dr. Anthony Stein," said Sitzmann.

DEFENSE VERDICT

The 12-person jury, after a heated deliberation, ultimately rendered their verdict, finding for the defendant. The jury was apparently swayed by defense arguments that Dillon had initiated her turn on a green left arrow and had no reason to anticipate that a pedestrian would be crossing against her protected left turn. Langley also argued that Dillon had insufficient time to react and stop in order to avoid hitting King, even if she did see him prior to impact.

MONDAY MORNING QUARTERBACKING

A motion for a new trial was deliberated for three hours before being denied. Klein, 48, says he was devastated by the loss, and was reluctant to talk about the verdict in detail. He reports that plaintiff King has since declared bankruptcy, and still has a golf ball sized lump on his head and permanent brain injuries.

Klein used Verdict Systems' Sanction trial presentation software to organize his case, and though he was dissatisfied with the result, he remains confident in his technology. He recounted post-verdict conversations with jurors who told him that the video did not make any difference in their decision.

Klein blamed the loss on California's "outrageous" jury selection process, particularly in Santa Monica (despite its reputation as a very liberal community). He also criticized himself for making a mistake in jury selection, allowing one juror to be seated whom he felt was hostile to his client.

In the end, Langley believes that his use of technology made his arguments much stronger. The ability to show text beside a video deposition, highlighting and emphasizing certain words made everything much faster and easier, he says.

The lawyers did face one "level field" challenge: Judge Baker put strict time limits on the trial-22 hours per side.

It was a challenge. "You each have 22 hours for opening, closing, everything, and because this was a brain damage case, there were a lot of brain scans to go through," said Langley.

On Langley's wish list for future trials is technology (perhaps video) that could capture images of witnesses as they physically point to brain scans. "[Klein would] go through the scans and ask his expert questions, and there was no way to make a record of what he's looking at—without a freeze frame."

LESSONS LEARNED

Technology was a cornerstone in King v. Dillon, yet this trial also reminds us that technology alone does not make the case.

Langley was able to turn the tables on the plaintiff by deconstructing their animation. After this case, Klein may want to explore jury selection software or consultants.

The use of litigation support technology bolstered everyone's arguments.

Ultimately, says Sitzmann, "I think the combination of his polite, deferential, Southern way of speaking combined with his low-key use of technology was extremely compelling to the jury."
A 47-year-old woman was struck by a 9,000 lb. forklift, crushing one of her legs (requiring its amputation) and severely damaging the other. The accident occurred at a factory where the woman’s job was to operate large power presses. On the night of the accident, she shut off her press and was about to go on a break when the forklift struck her from behind.

Although the employer’s accident report stated that the woman stepped in the aisle as the forklift approached, and that the forklift driver had worked two consecutive shifts the night of the accident before striking her, the attorney’s investigation showed that the accident was caused by the forklift’s unusually large blind spot.

On this forklift, the mast (which raises and lowers the lift mechanism on the truck) created a large blind spot while driving forward. Further investigation revealed that the woman could not have heard the electric forklift approaching due to the background noise of the factory.

At first, this case seemed to be one that must be tried. Although the damages were significant, the liability issues could be vigorously challenged through discovery and trial.

How can you best maximize the chances of reaching a settlement in a case like this, where it seems unlikely the defendant will settle for the fair value of the case — a multi-million dollar settlement — until you are at the courthouse steps or your client has experienced the trauma of reliving the accident at trial?

**Preview Your Case**

To bring an early resolution to cases such as this, you must give the defense attorneys and their clients the opportunity to preview your case before trial. Challenging liability and damage issues must be presented in a clear, persuasive manner to convince your opponent that a trial is too risky.

One pretrial approach to elevate your case to something more than the printed word, is to present your opponent with a video settlement brochure. This brochure, using the power of video, can help you obtain the true value of your case and bring an early resolution to litigation.

For example, in the forklift accident, the questions raised by the accident report needed to be addressed in order to begin settlement negotiations in the plaintiff’s favor. The forklift’s blind spot had to be demonstrated dramatically, and the defendant had to be shown the impact of the poorly designed mast on the driver’s ability to steer clear of pedestrians. The woman’s minor role in the accident also had to be dramatized by recreating the conditions in the work environment.

**Use of Animation**

To demonstrate how the mast blocked the

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Obtaining the Best Settlement

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driver's visibility in this case, animation was created. With computer animation, a virtual camera can be placed anywhere in the digital environment to give an otherwise unattainable visual perspective.

Work closely with an animator to build your animation frame by frame, to assure its accuracy and admissibility at trial. In this instance, an independent laboratory fed into a computer the precise measurements of the forklift to build a three dimensional blueprint of the forklift. Using advanced computer graphics, it was possible to place the camera exactly where the driver's eye would be.

The computer animation allowed the viewer to approach the forklift, enter it, and see what the driver would see. Similar to virtual reality, the viewer could experience the perspective behind the wheel of the forklift and travel down an industrial aisle. In this way, the defense had a clear understanding of the forklift driver's poor visibility on the night of the accident.

Animation is just one part of a successful video settlement brochure. The video settlement brochure is further developed by writing a script that conveys your theory of the case in a clear, concise manner.

**Convey Theory in Script**

Even complex, technical issues should be reduced to a few sentences. Similar to a news format, you should give the viewer an idea of the type of accident involved, a description of the parties involved, and your theory of the case.

The order in which you present these elements should be guided by your sense of how to tell the story. Your video settlement brochure should present key liability and damage witnesses in a mini-documentary style to create the most compelling 20-30 minute presentation of your case. In this way, your intense pre-trial preparation is formulated into a con-

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Obtaining the Best Settlement

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cise, visually dramatic presentation for your adversary's early assessment.

Work with an experienced technician to accumulate a library of interviews to be used for your brochure. In the above example, the plaintiff, family members, liability and damage witnesses all were interviewed. Your technician should shoot the video footage in, at a minimum, VHS format. A high resolution format will help maintain the quality of your video throughout the editing.

\textbf{Taping Witnesses}

Prepare your witnesses to discuss the most significant aspects of their testimony in an informal manner. Some witnesses will need substantial time to repeat interviews to establish a rapport with you, the interviewer, or to feel comfortable in front of a camera. Ask your witnesses a question that will elicit the appropriate testimony, although you may choose to edit-out your question in the final version.

A succinct, direct explanation is the most effective communication in this medium, and you will want to help your witnesses encapsulate their thoughts — or in the current jargon, speak in sound bites.

Although your interview may take 45 minutes, you should edit the interview to the most compelling 2—3 minutes of testimony, because the longer interviews tend to lose the interest of the viewer. Witnesses usually feel more comfortable in their own homes or offices. Because you do not have the same control of lighting as you would in a studio, ask your technician to create a two or three point lighting to enhance your subject.

Prepare your witnesses to dress appropriately. Experts should wear their professional garb; doctors, rehabilitation therapists, etc. should wear their hospital coats with the name on it. Lay witnesses should have clothing, hair styles and makeup that do not distract the viewer. Solid, pastel colors work well, where bold patterns and bright colors draw attention away from the witness testimony. Your technician should also have a small video monitor for you to preview the composition of the setting and to check for any further distracting elements, such as very reflective eyeglasses or dark shadows on the witnesses' faces.

After you have completed your interviews, have your technician time-code the various tapes, which allows you to rough cut your raw footage. This will make the editing process much easier. Do your editing in two stages. Your first rough cut can be used to show test audiences (co-workers, focus groups, etc.) This process should help you select the most compelling footage. After you get feedback, you can then do your final editing.

With the use of video settlement brochures, you can present complicated issues in a clear, persuasive format.

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If your technician has digital editing equipment — as opposed to analog or linear equipment — modification will be faster and easier. The most detailed planning still will require revisions and digital editing will provide the necessary flexibility.

Following your interviews, you will also want to select the visuals to superimpose over the announcer and your witnesses' testimony. These visuals help tell the story and also create more interesting videos. In the forklift case, while the plaintiff explained the changes in her life as a result of her injury, "before" and "after" photos appeared on the screen. When the liability expert delineated the defects in the forklift, crucial documents and admissions from the defendant's deposition were superimposed over the expert's explanation.

The Voice-Over

After you have inserted the visuals and are satisfied with your script, seek a professional announcer (or voice-over) to present the introduction to your video and to present the witnesses. His or her voice-over should be recorded in a sound studio, which has the necessary editing equipment. A professional will give your video the appropriate sound, pacing and emphasis. The announcer's voice also allows you to segue through the elements of your story.

With the use of settlement video brochures, you can present complicated issues in a clear, persuasive format. Your ability to communicate and advocate on behalf of your client is greatly enhanced because concepts once limited to written text can now have visual impact and force of video. Most importantly, the video gives the opportunity to present your case at trial in a format that should convince your adversary of the best settlement value of your case.

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Inside the High-Tech Courtroom

To Take Advantage of Innovative Equipment, Place Your Request Early for Courtroom 625

BY DANIEL J. SIEGEL

When Judge William Manfredi discusses Philadelphia’s high-technology courtrooms, he sounds like a proud father. “Our new technology courtrooms are improving the way lawyers try cases,” says Judge Manfredi, supervising judge, Trial Division-Civil for the Court of Common Pleas. “When used fully, these courtrooms make for a cleaner presentation of documentary evidence and shorten trials by one third,” he adds. Attorneys who have tried cases in the new courtrooms echo the judge’s enthusiasm.

So what’s all the fuss? Although high-technology courtrooms sound like something from the future, what they really do is combine modern technology with traditional courtrooms to allow attorneys to present their cases more efficiently and more effectively. The centerpiece of Philadelphia’s program is Courtroom 625, a beautifully renovated courtroom that mixes historic architecture with cutting-edge technology. Judge Manfredi believes that Courtroom 625 is the only historically certified space that houses a high-tech courtroom.

At first glance, Courtroom 625 looks like most other courtrooms. But a second look around reveals significant differences. The podium for counsel, where lawyers can link their laptop computers into the room’s fully networked infrastructure. From this podium, counsel can control the evidence presented and move seamlessly from one piece of evidence to another. With the touch of a button, jurors and witnesses can view a video clip, then a chart and then a transcript, all of which can be annotated, printed and preserved. Other features of the courtroom include:

- An easy-to-use wireless control system.
- A video evidence presentation system with an interactive plasma display and touch-screen annotation at the podium and witness positions.
- An interactive display that is also a SmartBoard® (a board that one can “draw” on) mounted on the 50-inch plasma screen.
- Touch-screens at the witness stand and podium that allow a witness or attorney to mark digitally displayed evidence for everyone in the courtroom to see.
- Document cameras at the podium and witness locations that permit easy display of evidence such as documents, pictures and x-rays.
- A video printer that makes postcard-size representations of the displayed evidence, creating a record of all annotated materials, without replacing the originals.
- A teleconference system and a videoconferencing system.
- Multiple video cameras that automatically switch to the speaker at various locations within the room without requiring any operator control.
- Digital recording equipment and voice-activated cameras.

Courtroom 625 is fully networked. By hooking up their computers to the network, judges and counsel can receive “real-time” transcripts. In addition, videoconferencing is a snap. In short, Courtroom 625 is user- and jury-friendly, provided counsel are prepared. In fact, to reduce the possibility of technological glitches, the court requires all counsel to have qualified personnel present to operate the system. (The court does not supply personnel for the parties.)

While most of the attention has, rightful-
ly, been focused on Courtroom 625, the
court has also renovated four other
courtrooms across the hall from Courtroom
625. Although these do not have all of the
bells and whistles, they are fully wired and
ready for trial. Litigants using these court-
rooms will need to supply more hardware
(such as large screens), but they will still be
able to utilize technology similar to that
used in Courtroom 625. In most instances,
these alternative courtrooms are able to
accommodate counsel’s needs.

“If you have planned properly, the presen-
tation of evidence goes very smoothly in
the high-tech courtroom,” says attorney
Peter Hoffman of McKissock & Hoffman.
On the other hand, as with traditional
courtrooms, if an attorney has not done his
or her homework, the lawyer will fumble
around and make mistakes. Hoffman
believes that one of the high-tech court-
room’s most important assets is the ease
with which the jury can see, hear and
understand the evidence.

For example, consider a document that
is being used as evidence. In a traditional
courtroom, counsel seeking to use the doc-
ument as an exhibit would first mark it,
provide it to the witness and give copies to
defense counsel and the trial judge.
Perhaps, if counsel were well prepared, he
or she would have copies for the jury. In
Courtroom 625, the process is simpler.
Counsel just calls up the document on his
or her computer, and the item immedi-
ately displays on all of the courtroom’s moni-
tors. If there is a particular passage that
counsel wants to emphasize, it can be
highlighted on the screen, and a copy can
be printed immediately for preservation.

“In terms of providing information for
the jury, it’s outstanding,” says Hoffman.
“The jury can follow along on their indi-
vidual monitors, and attorneys can use the
courtroom’s audio and video capabilities to
improve the jury’s understanding of the
issues in a given case.”

Of course, there are also safeguards to
prevent an attorney from running amok.
The trial judge has a “kill” button that
instantly blackouts every monitor and
speaker if he or she disallows a piece of
evidence or if overzealous counsel tries to
go too far. Most reports indicate, however,
that attorneys using the courtroom have
deliberately handled themselves appropriately.

The court is actively encouraging the use
of Courtroom 625 and the other technology
courtrooms, which are in constant demand.
To be assigned to the courtroom, counsel
must file a Request for Technology
Courtroom 625 form, which is available for
download at http://courts.phila.gov/pdf/
forms/625request.pdf, or can be picked up
at numerous locations, including at case
management conferences and the Complex
Litigation Center. Because the demand
for Courtroom 625 is high, counsel should
submit their requests as far in advance of
trial as possible, but no less than thirty days
before trial. Generally, more than one set of
litigants requests the courtroom, with oth-
ers assigned “back-up” status.

The bottom line is that the Philadelphia
courts are becoming more and more tech-
nologically savvy. But Courtroom 625
remains the hallmark of Philadelphia’s
transition into a court for the twenty-first
century. As Peter Hoffman notes, “I’d love
to try all of my cases there.”

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Straight to Video

Video Evidence Before and During Trial Can Bring Your Clients’ Stories to Life

If a picture is worth a thousand words, then a video is worth thousands of words. When preparing a case for trial, attempting to settle a case before trial, or standing in front of a judge or jury, lawyers who use real-life video effectively believe that they achieve better results than they would have had they simply used documents, still photographs, diagrams or other more traditional methods of presenting evidence.

When most lawyers think of videotaped evidence, they tend to refer to more traditional videos, such as those of experts and other witnesses who could not testify live, or of pictures of accident sites and other locales that cannot easily be brought into the courtroom. But video is far more powerful, and with digital recording becoming ubiquitous, the sources for footage are more numerous than ever. Thus, when used effectively, video presentations can facilitate settlement or show a jury information with more impact than any words that come out of a witness’s mouth. Plus, because there are so many different sources of video evidence, an attorney’s options are numerous.

“Using video serves many purposes,” according to attorney Mark LeWinter of Anapol, Schwartz, Weiss, Cohan, Feldman & Smalley, P.C., who integrates video both at trial and when preparing settlement brochures. “When creating a settlement brochure, for example, I will combine various videos, including those of my clients, the accident scene, and experts, to create the movie version of the ‘book’ I’m going to present to the jury,” LeWinter says. More importantly, LeWinter, like other attorneys, also draws on other sources, such as films the client may have taken before the accident or footage from public locations that the client may not have realized was even taken.

By doing so, LeWinter feels that he is providing opposing counsel, their clients and the insurance carriers with an opportunity to evaluate a case before trial. “When I prepare my video, I’m sequencing the case. I consider what facts I need, and in what order will I present them, and then compile the video in the same sequence in which I plan to present them to the jury,” LeWinter says, adding, “The carrier can then review the video, convene a focus group, or do whatever it needs to try to predict how a jury will respond. Frequently, the videos can facilitate settlement without ever having to go to trial.”

The content of the video remains crucial. Often, the best materials are not the traditional testimony prepared for trial. Rather, in this day and age, in which “Big Brother” seems to be watching everything we do, alternative sources of video evidence can provide fertile material for trial. For example, when someone goes to an ATM, a camera records every move he or she makes. Walk into a convenience store, and there will almost always be a camera focused on the checkout area. When parking at a big box store, look up at the roof of the building. What you will often see is a battalion of cameras trained to record every move by every person in every corner of the parking lot. In short, it seems as though Big Brother has invaded every space, except, perhaps, at home.

Many people believe that Big Brother’s eyes are yet another way that we have surrendered a portion of our privacy in the name of technology. After all, Big Brother now may know that you have run a red light or failed to pay a toll on the local interstate. After all, Big Brother not only knows what we do, but he also mails us a traffic ticket when we do it.

Lawyers tend to forget, however, that Big Brother visits us at other times and in a variety of locales, including our homes, at school and at family gatherings. During these moments, he may even be a welcome visitor because he records those celebrations for posterity. In those situations, the captured moments can be a crucial tool for lawyers in the courtroom. Plus, for better or worse, these moving pictures are generally worth far more than the 1,000-word value we have traditionally placed on a still photograph. In fact, for attorneys, movies and videos are often worth thousands and thousands of words.

“Still photos don’t do,” says attorney Edward F. Chacker of Gay, Chacker & Mitten, P.C., who for many years has used family films and other movies to demonstrate how his clients’ lives have been impacted by a particular injury. “Everyone describes people as being 65 and viable,” Chacker says. “You could show pictures of your clients all day long, but jurors and defense counsel will often prejudge the plaintiff, concluding that they’re not as good as they say they are. There’s nothing like seeing the plaintiff with their own eyes to help jurors fully understand your clients.”

Chacker recalls one case he tried in the early 1990s. His client was in her late 60s and claimed to live a very active life before suffering a serious knee injury. Defense counsel was skeptical, claiming that the woman’s deposition testimony about her dancing and other activities was embellished for personal gain. Chacker dug deeply into the woman’s social life and learned that she had attended a wedding just a few weeks before her accident. He then obtained a copy of the wedding video, which
showed his client “doing the Mummers Strut with a bunch of 17-year-olds. There she was dancing around like someone half her age, or younger. That video told a story that words just couldn’t convey,” he says.

At trial, to demonstrate the dramatic change in his client’s condition to the jury, Chacker juxtaposed footage from the wedding with a day-in-the-life video that showed his client going to therapy and shopping both in a wheelchair and while using a cane. “The difference was vivid,” Chacker recalls, “especially to the defendant, which settled the case before the jury ever had an opportunity to render a verdict, and for substantially more than it offered before trial.”

Chacker emphasizes that the “idea is to bring people alive. There is nothing better than a jury seeing something with their own eyes.” In one wrongful death case, for example, Chacker interviewed the decedent’s co-workers, all of whom were listed as trial witnesses. “We did a profile of the person at work, then at home. Next, we showed our client at home after the accident, struggling to get around the living room, and segue to footage of the same person at home on a respirator days before death,” Chacker recalls. “The video was very powerful and said more than any witness could.”

“Juries respond favorably to videos they know aren’t staged,” LeWinter says. That is why defendants often utilize video surveillance films — not because they generally prove that the plaintiff is either lying or is a malingerer. Rather, surveillance movies, even when benign, often show a party performing physical activity that exceeds what he or his doctor says the person can do, thus creating an “Aha” moment for the jury. “It allows the jury some insight into the actual life of the claimant, separate and apart from the posturing in the courtroom,” says attorney James Haggerty, of Swartz Campbell, LLC in Philadelphia and president of the Pennsylvania Defense Institute. “It gives them an opportunity to feel as though they are observing the real facts of the case.”

There are many other ways to incorporate video into trial preparation. First, investigate locations where your client has been that may provide videotaped evidence of some point you are trying to prove or to disprove. For example, does your client’s job regularly film employees at work? Banks often do, as do supermarkets and many other retailers. If your client works in a regulated industry, such as a casino, cameras may capture virtually everything done during a workday. Or, if your client lives in a city that regularly films certain streets, the footage may also be helpful. Once you obtain copies of any films, it is far easier to demonstrate how active your client was before being injured. On the other hand, if your client has exaggerated his or her injuries or pre-injury activities, you can discover it and address that issue before defense counsel brings it up in front of a jury during cross examination.

Using video evidence, however, is not without its pitfalls. Consider some common technological problems with video evidence, and address them before walking into a courtroom. For example, does the film have sound, and if so, do you need to include the audio? Most types of video do not contain audio or, if they do, the audio might be bad or of very poor quality. Look at the film. How is the lighting? Can anyone really see what is happening without squinting? Is the camera angle helpful? Does the film convey the message you intend to convey? And most importantly, does the film corroborate other evidence you have or intend to present? If not, a judge may rule the evidence inadmissible.

Similarly, as with other evidence, credibility is critical, and inaccurate or misleading evidence can do dramatic harm. For example, during a 1999 federal antitrust trial, Microsoft presented video evidence showing how a computer could perform a certain task. Opposing counsel discovered, however, that the video was not of one computer — as Microsoft claimed. Instead, as Microsoft later admitted, multiple computers were used to create the videotape, thus explaining how, for example, an icon for Microsoft Outlook appeared in one frame and was gone in another. At one point, Judge Thomas Penfield Jackson asked James Allchin, Microsoft’s senior vice president, “How can I rely on it [the tape] if you can’t tell me it’s the same machine?” At another point, the judge said that the discrepancies “cast doubt on the reliability — the entire reliability” of the videotaped demonstration.

Like any form of evidence, video evidence has its benefits, its limitations and its pitfalls. When used effectively, video evidence will streamline your case, bolster your witnesses’ credibility and lead to better results.

Daniel J. Siegel (pba@danieljsiegel.com), a member of the Editorial Board of The Philadelphia Lawyer, is a sole practitioner in the Philadelphia area and president of Integrated Technology Services, LLC.

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Technology

Welcome to the World of E-Discovery

Why Native File Formats and Meta Data Make a Difference When Considering Electronically Stored Information

BY DANIEL J. SIEGEL

Lawyers may kick and scream, but electronic discovery (commonly called e-discovery) is now part of the Rules of Civil Procedure. Those attorneys who had hoped it would disappear like Nehru jackets can no longer avoid the reality that, effective Aug. 1, 2012, technology, and all of its repercussions, are part of the litigation landscape.

What caused this seismic shift is that the Pennsylvania Supreme Court has amended the Rules of Civil Procedure to include e-discovery. In doing so, the court did not follow the trail (and the extensive case law) created by the federal courts. Instead, the court chose a different path, and it is hard, if not impossible, to tell where it will lead. Only time will tell.


(a) Any party may serve a request upon a party pursuant to Rules 4009.11 and 4009.12 or a subpoena upon a person not a party pursuant to Rules 4009.21 through 4009.27 to produce and permit the requesting party, or someone acting on the party’s behalf, to inspect and copy any designated documents (including writings, drawings, graphs, charts, photographs, electronically created data, and other compilations of data from which information can be obtained, translated, if necessary, by the respondent party or person upon whom the request or subpoena is served through detection or recovery devices into reasonably usable form] and electronically stored information).

(b) A party requesting electronically stored information may specify the format in which it is to be produced and a responding party or person not a party may object. If no format is specified by the requesting party, electronically stored information may be produced in the form in which it is ordinarily maintained or in a reasonably usable form.

The court also revised the introduction to Rule 4011:

Rule 4011. Limitation of Scope of Discovery [and Deposition]

No discovery [or deposition], including discovery of electronically stored information, shall be permitted which

(a) is sought in bad faith;
(b) would cause unreasonable annoyance, embarrassment, oppression, burden or expense to the deponent or any person or party;
(c) is beyond the scope of discovery as set forth in Rules 4003.1 through 4003.6;
(d) is prohibited by any law barring disclosure of mediation communications and mediation documents; or
(e) would require the making of an unreasonable investigation by the deponent or any party or witness.

The court also added the following note to Rule 4009.11:

Note: A request seeking

Because it takes time for caselaw to develop, litigators will have little guidance and neither will the judges who must rule upon the disputes.

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electronically stored information should be as specific as possible. Limitations as to time and scope are favored, as are agreements between the parties on production formats and other issues.

The court added a note to Rules 4009.11, 4009.12, 4009.21, 4009.23 and 4011 advising attorneys to “See also Rule 4009.1 generally regarding electronically stored information.” Unfortunately, these Rules changes don’t provide the type of guidance lawyers had hoped for. Or, at least, the new Rules do not parallel the Federal Rules, under which there is extensive case law. In fact, the court explicitly rejected the approach adopted by the federal courts in its “Explanatory Comment – Electronically Stored Information:”

A. No Importation of Federal Law

Though the term “electronically stored information” is used in these rules, there is no intent to incorporate the federal jurisprudence surrounding the discovery of electronically stored information. The treatment of such issues is to be determined by traditional principles of proportionality under Pennsylvania law as discussed in further detail below.

B. Proportionality Standard

As with all other discovery, electronically stored information is governed by a proportionality standard in order that discovery obligations are consistent with the just, speedy and inexpensive determination and

Survey: We Really, Really, REALLY Like Our Smartphones

A staggering 68 percent of smartphone users surveyed said they “couldn’t live” without their devices, according to a recent study conducted by the Online Publishers Association.

The OPA survey says an estimated 44 percent of the U.S. Internet population, ages 8-64, owns a smartphone (estimated 107 million consumers), up from 31 percent (73.2 million consumers) in 2011.

Other findings from the survey:
- Android users continue to lead Apple iOS users, with both platforms growing in share since last year; Blackberry and all other platform shares declined rapidly over the same period.
- Smartphone users are trending older and more balanced between males and females, and are more affluent – the majority of smartphone users come from households earning $50,000 or more per year.
- Fifty-seven percent of the U.S. Internet population, ages 8-64, are expected to own a smartphone by early 2013 (estimated 142.3 million consumers).

Over the course of a week, regular smartphone activities include accessing content/information (93 percent); accessing the Internet (59 percent); checking email (58 percent); listening to music (46 percent); using a social network (48 percent); playing games (43 percent); downloading and using apps (39 percent); making purchases (14 percent); and reading books (14 percent). It should be noted that all those activities showed decreases from 2011, with the exception of accessing content, which was the same.

Get Juice from PowerCup

PowerLine’s PowerCup Mobile Inventor helps you plug in on the go. We’ve all been there – the long car trip and suddenly, someone’s device runs out of juice. That’s where the PowerCup comes in.

It looks like a cup of coffee from some trendy java joint. And it fits in your vehicle’s cupholder. But on top, there are two plugs for AC cords and one for a USB cord. The PowerCup plugs into your car’s 12V power socket and can power up to three devices.

PowerCup is fairly quiet and takes up a minimum of space. And if it keeps your passengers plugged in, connected and online, it’s worth the $35 price (from Amazon).

Projecting With a Camera

It’s a digital camera! It’s a projector! It’s both! Nikon’s COOLPIX S1000pj is a 12.1-megapixel camera with a 5X wide-angle zoom lens that lets you display the HD images and movies you’ve just taken with the touch of a button.

The addition of the projector doesn’t add much weight or size to the camera. In fact, were it not for the round opening on the front marked “projector,” it would be pretty much indistinguishable from other point-and-shoot models. Your images and movies can be displayed at sizes as large as 40 inches diagonal.

The projector is very bright, but the darker the room, the better the viewing experience. The rechargeable lithium ion battery will last for about 220 photos. The $1000pj lists for $429.
resolution of litigation disputes. The proportionality standard requires the court, within the framework of the purpose of discovery of giving each party the opportunity to prepare its case, to consider: (i) the nature and scope of the litigation, including the importance and complexity of the issues and the amounts at stake; (ii) the relevance of electronically stored information and its importance to the court’s adjudication in the given case; (iii) the cost, burden and delay that may be imposed on the parties to deal with electronically stored information; (iv) the ease of producing electronically stored information and whether substantially similar information is available with less burden; and (v) any other factors relevant under the circumstances.

C. Tools for Addressing Electronically Stored Information

Parties and courts may consider tools such as electronic searching, sampling, cost sharing and non-waiver agreements to fairly allocate discovery burdens and costs. When utilizing non-waiver agreements, parties may wish to incorporate those agreements into court orders to maximize protection vis-à-vis third parties. See, e.g., Fed. R. Evid. 502(c).

D. Eliminating References to “Depositions”

The elimination of specific references to “depositions” in Rule 4011 is not intended to exclude depositions from the scope of this rule. The reference was eliminated because there was no reason to call out this one form of traditional discovery among many.

While this Note is intended to provide guidance, in actuality it provides little. The court clearly intends to encourage “traditional principles of proportionality.” What does that mean? That question is especially difficult to answer in light of Rule 4009.1(b), which permits a “party requesting electronically stored information [to] specify the format in which it is to be produced and a responding party or person not a party may object.” This is a recipe for discovery disputes, particularly because so many attorneys simply don’t understand e-discovery or the methods information is stored, maintained or produced.

To compound the problem, the Rule states, “If no format is specified by the requesting party, electronically stored information may be produced in the form in which it is ordinarily maintained or in a reasonably usable form.” In other words, a party can produce it in any way it wants. That is where more problems will arise.

The best and most economical way to produce electronic data is in its native form. Think about it. It is easy to copy the files from one computer to another, but it may be easier for the less tech-savvy (and others with less than honorable motives) to merely print out the material. Why is this a problem, you ask? The answer is that printed information does not show the metadata, the information behind the data. In other words, it won’t show that a person manipulated a spreadsheet and changed the formula in a cell so that it would provide a result that it should not have. Or, it won’t show the revisions in documents that can be game changers.

The court’s goals are clearly laudable, but it seems a fait accompli that judges in Pennsylvania who handle discovery disputes are on their own. Because it takes time for case-law to develop, litigators will have little guidance and neither will the judges who must rule upon the disputes. And because the court made it clear that Pennsylvania was not adopting the Federal Rules, Pennsylvania judges must instead create their own body of law until, as is inevitable, the Supreme Court weighs in on a dispute and fills in some, if not all, of the blanks that are currently empty.

Pennsylvania lawyers, welcome to the world of e-discovery.

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It is easy to copy the files from one computer to another, but it may be easier for the less tech savvy (and others with less than honorable motives) to merely print out the material.
Reel in jurors with tech-savvy presentations

Daniel J. Siegel

Imagine watching a foreign-language film and being shown the English subtitles only after you’ve finished the movie. You’d be hard-pressed to put the translated dialogue back into the context of the film. Yet that is the experience of many jurors who must wait until they begin deliberations before they can take a really good look at much of the evidence in the case they’re deciding.

Historically, jurors often had to speculate about the details of some of the evidence introduced in trials until hours, days, or weeks after they first heard of it. For example, a lawyer might show a document to a witness before introducing it into evidence, but the jurors could not examine it closely until they convened in the jury room.

Yes, lawyers talked about putting on a show at trial, but this was often limited to a few fancy display boards or enlargements of one or two key documents—certainly not a detailed presentation of evidence. To make matters worse, in many jurisdictions jurors could not—some still cannot—take notes during trial, forcing them to rely on their collective memories. And we all know how fickle memory can be.

Fortunately, the way lawyers present cases to judges and juries has been revolutionized.¹ Now, improved software makes it easier and far more cost-effective to use cutting-edge technology at trial. The result: Judges and juries see more details of evidence as it is introduced; cases are tried more efficiently, and the parties and the courts save time and money.

In a conversation I had with Judge C. Darnell Jones II, president judge of the Court of Common Pleas of Philadelphia County, he recalled the 2001 trial in *Mangluzzi v. Panini*²—the first time he had presided over a trial in which the parties primarily used technology to present their cases. The lawyers used overhead projectors, PowerPoint presentations, and electronic file-management and evidence-retrieval systems. The bench trial was an “absolute delight,” Jones said, adding that he particularly “appreciated the efficiency of the presentation of the evidence and of document retrieval.”³

What was new (and relatively difficult) in 2001 is now old hat (and relatively easy). Attorneys rarely present any case these days without technological assistance. Rather, judges, jurors, and litigants expect attorneys to use computers when presenting their cases. In fact, many courts now have “high-tech courtrooms” designed to help lawyers present evidence using computers, overhead projectors, videotape, and other technological tools.

Attorneys now have many options for preparing technology-savvy courtroom presentations.

PowerPoint perks

The simplest way to tap into technology is by using Microsoft PowerPoint. It doesn’t have all the bells and whistles of the more versatile legal-specific programs, but as part of the Microsoft Office Suite, PowerPoint is ubiquitous and easy to use.

It also does much more than merely display the lines of text you may have seen in presentations at legal education programs or seminars. If you have documents, photographs, and other visual evidence, for example, displaying them is a snap with PowerPoint.
If the images are not already on your computer, all you have to do is scan them, save them as image files (generally called .tif or .jpg files), and insert them into your PowerPoint slides. But don't go overboard—fancy backgrounds or graphics tend to distract judges and juries from the point you're trying to make.

PowerPoint presentations are sometimes most effective at trial when they're used to highlight important text. For example, you might want to focus the jurors' attention on a part of a defense expert's deposition that contradicts his or her trial testimony. Showing this conflicting deposition testimony can add an exclamation point to a killer cross-examination.

You can also present video files, such as depositions or animations, although it is not always easy to edit these files in PowerPoint. And you can create PowerPoint slides that summarize the evidence—including timelines and calculations of damages—that will bolster your opening statement and closing argument.

If the courtroom is technology-friendly and has a computer that is already equipped with PowerPoint, you may be able to simply copy your presentation onto it and play it. Otherwise, all you need to bring to court with you is a laptop computer with PowerPoint installed and a projector and screen on which to show your presentation.

You can play any slide in your PowerPoint presentation by typing in its number. When you use this software, jurors won't have to wait until after a witness testifies to see and understand what you and the witness are talking about.

More dramatic flair

A second option is to use trial presentation software, which is extremely versatile, comparatively inexpensive, and easier to use than ever. It works well when you have another attorney or paralegal who can attend the trial and operate the software for you.

The hallmark of these software programs is their versatility. In particular, they let you produce slides and videos with a wide array of features that allow observers to see every piece of evidence the specific way you want them to experience it.

Foremost among these programs' capabilities is the ease with which you can prepare and edit video clips. You no longer need advanced computer skills to create and edit portions of testimony; instead, you can edit your video to the split-second with a mere click of a mouse. Or, with the court's approval, you can remove the distracting objections and other banter that often clutter depositions, allowing jurors and judges to view a 'clean' version of the witness testimony.

With trial presentation software, you can organize presentations in a way that moves seamlessly between different types of evidence—just like the lawyers on television and in the movies do—for the most dramatic impact. For example, while you are presenting a videotaped deposition, you can cut to or split the screen to display documents and other evidence to which the witness refers. And these programs are generally compatible with other litigation support software, including LiveNote, CaseMap, Concordance, and Summation.

Trial presentation software gives you far greater control over when and how jurors view evidence, essentially letting you become the producer of your own trial.

A third alternative is to hire an outside consulting firm to handle all or part of your technology needs—if you can afford the expense. In the long run, it is generally more cost-effective to get ready for trial using your own resources than it is to pay an outside consultant to prepare your electronic evidence and operate it at trial.

You could, of course, opt to present cases the old-fashioned way, keeping the jury in the dark until the end. While that may not necessarily preclude a favorable verdict, it's the equivalent of forcing your children to watch their favorite programs on black-and-white television. They may do it, but they almost certainly won't be happy or cooperative.

With the evolution of trial presentation technology, attorneys have many ways to share evidence with judges and jurors as it is introduced. Regardless of which trial presentation method you choose, the days of showing an exhibit only to a witness—while jurors speculate about its contents—should be ancient history.

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Notes

1. See *e.g.* Jim Perdue Jr., *The Art of Demonstrative Evidence*, TRIAL 46 (May 2005).


5. Two of the more popular brands are Sanction (www.sanction.com) and Trial Director (www.indatacorp.com/Products/Trial/trialDirector.aspx).
TECH BRIEF
November 2009, Volume 45, No. 11

Are you ethically bound to be tech-savvy?

by Daniel J. Siegel

Lawyers are required to maintain their skills in the practice of law, yet many attorneys fail to keep up with technological innovations that affect how they handle cases. That leads to the question: Are lawyers who refuse to use technology representing their clients competently? In other words, by failing to use the latest technology, do lawyers violate their obligation to act competently on behalf of their clients?

In a recent civil trial involving a brutal rape, the defense lawyer used advanced technology to re-create the incident and show the jury other salient facts. The plaintiff lawyer, by contrast, used a cardboard model to show where the incident occurred and essentially eschewed the use of technology. Following a defense verdict, members of the jury said the defendant's use of technology in the case was an important reason why they ruled against the plaintiff, which makes you wonder whether the plaintiff received competent legal representation.

Rule 1.1 of the American Bar Association's (ABA) Model Rules of Professional Conduct says, "Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." Comment 6 of the rule ("Maintaining Competence") states that "to maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, engage in continuing study and education, and comply with all continuing legal education requirements to which the lawyer is subject" (emphasis added). According to the ABA Web site, "Competence in using a technology can be a requirement of practicing law. Requirements for technological competence may appear as part of rules for professional conduct, continuing legal education (CLE) programs, and malpractice insurance premium credits."

Surprisingly, it is in the area of "practice" that many lawyers are deficient. Technology allows lawyers to find and review documents more quickly, annotate transcripts more efficiently, stay abreast of changes in the law with the click or two of a mouse, and re-create and present evidence in ways that give juries and judges deeper insight into how events transpired.
It can also help them avoid situations that can lead to legal malpractice.

Despite these benefits, many lawyers continue to practice as though computers do not exist. They ignore the advent of high-tech courtrooms and could be leaving their clients and cocounsel at a significant disadvantage.

**Ensuring competence**

In a thought-provoking keynote address at the annual law and technology conference LegalTech in New York, U.S. Magistrate Judge John Facciola questioned whether current CLE requirements can really ensure that lawyers are competent in their particular areas of practice. Facciola offered many examples of technical incompetence; for instance, a lawyer who agreed not to use e-discovery, and a criminal defense attorney who admitted that he didn’t “understand this computer stuff.” These stories are alarming not only because of the lawyers’ conduct, but also because of its impact on the lawyers’ cases.

The solution to this situation is not simple. Still, lawyers clearly must adapt to new technologies to better serve their clients.

As times change, so does the definition of “competence.” When I graduated from law school 25 years ago, we performed legal research using books and used electric typewriters to create documents. Westlaw and Lexis were in their infancy, but many of us couldn’t use the services anyway because we had limited access to computers.

Some of you may remember Shepard’s pocket parts, those annoying pamphlets that came in a seemingly endless variety of colors and that were the de facto method of verifying that the cases we were researching remained good law. I’d be shocked if any attorneys still use the pocket parts.

As technology advances, so do our expectations of how lawyers will use these advances to benefit their clients. For example, it is the rare law office that uses typewriters, which have been replaced by PCs or Macs loaded with word-processing software. Some firms embrace technology; others fight it. The latter might end up relying on dated methods or denying that computers can make them better lawyers—and in the process shortchanging their clients.

The legal profession has debated the question of what constitutes competent representation for years, without reaching a consensus. And while many states have CLE requirements, none mandate that lawyers become competent in the latest law-related technology.

Medicine provides an obvious analogy. Twenty-five years ago, MRIs, CT scans, bypass surgery, and stents were either brand new or didn’t exist. But today, there is no question that a physician who refused to use these and other advances would be considered incompetent and would be the target of numerous malpractice lawsuits, if he or she still held a license. Yet, we do not hold lawyers to an analogous standard.

With the advent of electronic discovery and electronic filing, lawyers are being forced to use technology in their offices for certain tasks. Yet these same lawyers may not feel obligated to use technology during depositions, while handling discovery, or at trial.

Those lawyers who choose to stay well behind the technology curve do so at their own risk. While a reluctance to take advantage of cutting-edge or even mainstream technology may not be unethical, it’s not the best
Clients tend to be far more tech-savvy now than they were just a decade ago, and those who recognize the importance of technology in litigation may well select counsel based on their level of technological expertise. And it isn’t hard to imagine a scenario where a lawyer’s refusal to use technology might form the basis of a legal malpractice claim.

Many lawyers still remember using typewriters, carbon paper, and onionskin paper and may never have dreamed that in just a few years these onetime staples would become obsolete. Times change, and lawyers who fail to change with them may find themselves at a distinct disadvantage.

Technology may not always be easy to use and it may not always be fun, but neither is legal research. Yet both are crucial to your work. You would never think of writing a brief without researching the issues; your technological obligations are just as important.

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Notes:
1. www.abanet.org/tech/trc/research/ethics/competence.html
3. See the entry for Shepard’s citations on Wikipedia at http://en.wikipedia.org/wiki/Shepard%27s_Citations
TECH BRIEF
March 2011, Volume 47, No. 3
Tech devices to make you a better lawyer
Daniel J. Siegel

It’s a cliché, but it’s often true that the only difference between men and boys is the cost of their toys. This expression seems especially valid for lawyers and their electronic “toys”—gadgets like smartphones, tablet computers, and e-book readers. Yet these toys can more than pay for themselves in increased productivity in court, at client meetings, or almost anywhere else a lawyer chooses to use them.

Let’s look first at the smartphone, a term used to describe mobile phones—like the iPhone, Droid, and BlackBerry—that act like minicomputers. These uber-phones have been part of the tech-savvy trial lawyer’s communications arsenal for years.

We don’t buy mobile phones anymore based on how well we can hear a caller. Instead, we buy them because of all their other features, many of which are essential to the work that trial lawyers do:

- Appointment calendars. Wondering whether a proposed meeting conflicts with a scheduled hearing? Just check your phone.
- Address books. No need to call the office to get a client’s or colleague’s phone number when your entire address book has been loaded onto your phone.
- Web browsers. When you need to locate information quickly, run a search on your phone’s browser.

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- E-mail and text messaging. Nearly everyone uses their phones to receive and respond to e-mail, and text messaging has become nearly as ubiquitous.
- Voice recording. Dictation using a cassette recorder is so passé. Instead, use your smartphone to record your thoughts, and then instantly e-mail them to your office to be transcribed before you return.
- Digital cameras and video recorders. Remember when Polaroid instant cameras were considered high tech? But so inconvenient. How many times have you wished you had a camera with you? With a smartphone, you do, and the picture quality is just as good as—if not better than—what you get with some cameras. Several phones also feature video capability. You can take photographs or videos of clients or accident scenes, for example, and e-mail them to your office with ease.
- Applications (“apps”). Need to read or edit a Word document, Excel spreadsheet, or pdf? There’s an app for that—and for almost everything else you can imagine.

These are only a few of the features that make smartphones a necessity for many lawyers.

**Tablet computers**

Heralded as a consumer device, the tablet computer is an especially versatile tool for the busy trial lawyer. Unlike the smartphone market, which is fragmented and filled with new competition almost daily, the tablet market has so far been dominated by Apple’s iPad, so I’ll focus on its specific characteristics.

If you’ve been using a smartphone, you know how hard it can be to read anything—like e-mail—on a tiny screen. That’s the first advantage of working with an iPad. With its notebook-size screen, sending and receiving e-mail is actually a pleasure, although it may take some practice to get used to using the on-screen keyboard.

Assuming you either have access to a Wi-Fi connection or purchased a model with direct Internet access, you can use the iPad to do almost anything you could do on a desktop or laptop computer. You can use Google Maps, for example, to show a client an accident scene or to verify a witness’s description of it. You can store case information, including videos, photos, and files, on the device, allowing for instant access wherever you are. You can log onto legal research sites to verify or contest a point raised by opposing counsel or a judge.

The iPad supports a wide range of file types, including
- images (jpg, tiff, and gif)
- videos (H.264, mpeg-4, m4v, mp4, and mov)

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• Microsoft Word documents (doc and docx)
• Web pages (htm and html)
• Microsoft PowerPoint files (ppt and pptx)
• text files (txt)
• rich text format files (rtf)
• contact information (vcf/Outlook format)
• Microsoft Excel spreadsheets (xls and xlsx)
• audio files (AAC, mp3, Audible, aiff, and wav).

Numerous apps can greatly enhance your use of the device. The price of these varies, and many are free. Apple's suite of productivity programs lets you create documents and spreadsheets on the go. With the Adobe Acrobat app, you can bookmark long pdf files for easy access and search scanned files, work with portfolios, and use commenting tools easily. Another pdf reader called Good-Reader allows you to read very large documents, so you can create a library for a trial, deposition, or settlement conference. The Dragon Dictation app (based on the popular Dragon NaturallySpeaking software) turns spoken words into text, so you can use your iPad to take dictation.

These are only a smattering of the ways in which an iPad can be an invaluable assistant whenever you leave your office.

**E-book readers**

The Kindle, Amazon.com's e-book reader, is one of the simplest ways to take files with you to court and other proceedings. There are numerous competitors to the Kindle, but while Amazon keeps its sales figures a closely guarded secret, it seems clear that because the Kindle is Amazon's bestselling product, it likely has the lion's share of the e-book-reader market.

Unlike smartphones and iPads, which perform a variety of functions, the Kindle is simply a highly efficient black-and-white-screened document reader—and I love it. Reading books (which download almost instantly) and other documents is a pleasure, and while the iPad is virtually useless in bright sunlight, you can use the Kindle to read a book on the beach on a sunny day.

For attorneys, the Kindle's main attraction is its portability. If all you want is a gadget that lets you access and read documents, then the Kindle is for you. It's lightweight, the screen resolution is excellent, and the second-generation Kindle recognizes items in the following formats:

• Kindle documents (AZW and AZW1)
• text files (txt)
• unprotected Mobipocket books (MOBI and PRC)
• audio books (AA and AAX)
• music (mp3)

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Plus, and this is a big plus, you can either drag and drop compatible files (such as pdfs) right from your computer to the Kindle (as long as it’s plugged into your computer), or download content to the Kindle from your computer wirelessly. Kindle’s Personal Document Service allows you to e-mail approved files to your Kindle’s e-mail address. To use it, you simply send the document you want to load to your Kindle-specific e-mail address. From there, Amazon can transfer the files wirelessly in a Kindle-compatible format to your device for a nominal fee of 15 cents per megabyte in the United States.

To avoid having to pay a fee, or if you’re not in wireless range, just send an e-mail to “name”@free.kindle.com (an e-mail address that you create on Amazon’s Web site). In a matter of minutes (sometimes even seconds), you will receive an e-mail with the converted document attached; from there you just download the files via USB in a Kindle-compatible format.

Generally, it takes about five minutes to receive your documents this way, although documents that are in experimental file formats (such as pdf files) may take longer.

I use my Kindle to load and bring files to court, depositions, bar association meetings, and other events. If I have downtime, I can read a book or magazine or newspaper. The device has worked flawlessly for years.

Smartphones, tablet computers, and e-book readers are not only fun to use; they can help lawyers do what they do better, faster, and cheaper. And because they cut way down on the average lawyer’s paper pushing, they’re environmentally friendly too. Easy to use, compact, and lightweight, they can help even the least tech-savvy attorney be more productive—virtually anywhere.

The views expressed in this article are the author’s and do not constitute an endorsement of any product by Trial or AAJ.

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Trial

TECH BRIEF
September 2012, Volume 40, No. 9

What to take into the courtroom

Daniel J. Siegel

The days of trying cases without technology are almost history. Most judges and jurors expect lawyers to present evidence electronically, and it is almost unquestioned that trial lawyers who use technology will have a significant advantage over their adversaries. Still, to many lawyers, the use of technology in a courtroom can be intimidating. It need not be.

Any lawyer who enters a courtroom should understand how technology can benefit his or her client. Although many resources explain the basics, one of the best remains Effective Use of Courtroom Technology: A Judge’s Guide to Pretrial and Trial.1 While technology has advanced since its 2001 release, this guide is an excellent primer on many of the substantive and procedural considerations that come up.

Lawyers must determine the types of technology the court or judge permits and then decide which is appropriate for a given case. Some criminal defense attorneys try to limit their use of technology to demonstrate that the prosecution has far more resources available than the defendant does. On the other hand, lengthy and complex trials almost always benefit from the efficient use of technology and its ability to help the jury understand the issues in the case—such as through re-creations.

You must decide who will operate the technology and the roles of each person in the courtroom. A lawyer trying a case alone may have trouble operating the technology as well, because it diverts his or her focus. The technology can be used most effectively when a second person or a vendor joins the trial team. But that person must be familiar with the case so that he or she can quickly “go with the flow” and display evidence without interrupting the lawyer.

Gitches can and will occur no matter how much you plan ahead. You must have a backup plan in the event the technology crashes, including having a backup laptop and an additional hard drive with a duplicate copy of your data, bringing extra items such as batteries and projector bulbs, and having a plan in case there is a total technology failure.

After addressing these concerns, you still must decide what hardware and software to use to present your evidence.

Hardware and software

Basic trial hardware should include a laptop computer with a high-speed processor, ample memory, and a large hard drive to store all your exhibits and other evidence. You also should have a projector and a portable screen, lawyers have also used an overhead projector, visual presenter, or document camera, such as an Elmo.2 You can create a checklist of these items to use every time you go to trial so that you are confident you have packed everything you need.

While trial technology has changed dramatically over the last 15 years, particularly with the
What to take into the courtroom

The advent of the iPad, the goal of trial presentation software at its core is to efficiently and effectively present evidence to the judge and jury. Many programs can accomplish this, and the following information is by no means exhaustive.

Two of the more popular programs are Sanction (now LexisNexis Sanction) and TrialDirector. These all-encompassing programs allow attorneys to:

- replay video depositions of witnesses and parties
- create video clips
- synchronize a video deposition or a video clip with the text of the transcript, so that jurors can read the text as the witness testifies
- generate designation reports and video clips for the court
- display trial exhibits
- extract a portion of an exhibit to highlight specific information
- display exhibits side by side, so jurors may compare them
- play a witness's video deposition with or without scrolling transcript text
- display and highlight a portion of a witness's testimony
- create overlays of exhibits so the jury may compare them
- allow witnesses to mark up exhibits in real time and display them to the jury.

Because of the iPad's growing popularity, developers have also created trial software for it. Among the more popular iPad-based products are TrialPad, Exhibit A, and ExhibitView. Many more products exist for both Windows and the iPad.

Old reliables

Of course, there are ways to prepare your case for trial without using specially designed trial presentation software. But the difficulty with many of the more standard products is that they are not designed for flexibility. As a result, they do not adapt easily should you need to use an exhibit out of order or one that you had not anticipated.

Still, you can make the most of the old reliables. For example, Microsoft PowerPoint remains an excellent presentation program that allows you to embed video clips and display and annotate documents. Because PowerPoint is included with most versions of Microsoft Office, many attorneys already have it and can avoid buying something new.

Another alternative is Adobe Acrobat, preferably the professional version. While most people still think of Adobe as merely a PDF display product, it is far more. Like PowerPoint, Acrobat allows you to embed video clips and to highlight and annotate information. But if you need to respond to new information or evidence, it will be harder to do with programs like PowerPoint and Acrobat, which are not designed to make "on the fly" changes and are instead intended to be used in more "canned" presentations, such as opening and closing arguments.

If all you want to do is display pictures, you can use almost any viewer, such as the Windows Photo Viewer that is included with most versions of Windows. If you plan to use this approach, I recommend upgrading to one of the better viewers, such as ACDSee or iView, which permit users to highlight and annotate information.

If all you want to do is highlight text or display video clips, you may want to consider LexisNexis Textmap, which allows attorneys to not only annotate transcripts but also create video clips (provided the transcripts are in one of the video formats compatible with the program) as easily as any product I have ever used. You can also use TextMap to highlight and display portions of transcripts.

This column has only touched on the wide range of trial presentation products available and how they can help you represent your clients. The keys to success with these programs remain planning ahead, being flexible, and having a backup plan in the event of a technology collapse.

Daniel J. Siegel is the president of Integrated Technology Services in Havertown, Pa. He can be reached at trial@techlawergy.com.

Notes:


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# LITIGATION SUPPORT SOFTWARE

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iPAD Applications for Lawyers: A Compilation of Resources

iPad Apps for Lawyers and Law Firms
What are the most popular iPad apps used in law practices?
By William Pfeifer, About.com Guide

Among attorneys using the iPad in their law practices, a number of applications (apps) have emerged as the top iPad apps for lawyers. While some lawyers use these apps as part of developing a paperless law office, others use them simply as tools for enabling them to do more of their work remotely or while sitting in a courtroom. The iPad is not just a game or a toy, but a revolutionary tool that will increase efficiency in your law firm. Whether you want to telecommute, work remotely, operate a paperless law office, or have a virtual law practice, the iPad is a must-have tool for your law office.

1. Dropbox

Dropbox is a free file sharing system that allows users to share files (photos, documents, videos, etc.) from one device to another, whether it be multiple computers, iPhones, iPads, or even Android and Blackberry devices. Any files shared to a Dropbox folder are automatically shared among the devices or people that the attorney authorizes to use it. By using the iPad Dropbox app, a lawyer can carry the iPad to court to read and notate client files rather than carry paper files. Dropbox is one of the best tools a lawyer can add to his or her law practice for creating a paperless law office. The bigger the file, the more benefit a lawyer can gain by using Dropbox.

2. ReaddleDocs

ReaddleDocs is a document manager for the iPad which saves documents so they can be accessed anywhere. ReaddleDocs can access PDFs, MS Office documents (Word, Excel, and Powerpoint), Apple iWork files, and any other document converted to PDF. PDFs in ReaddleDocs can be highlighted using multiple colors, and notes can be added directly to the files. Files can be uploaded or downloaded using file sharing services such as Dropbox, GoogleDocs, MobileMe, and iDisk. As an iPad app for lawyers, ReaddleDocs is a great tool for reading and marking depositions and trial transcripts. Important pages can be tabbed, significant passages can be highlighted, and reference notes can be added from the iPad without having to open the file on the computer.
3. **Goodreader**

*Good.iWare*

Attorneys are divided over whether Goodreader or ReaddleDocs is the best document viewer for the iPad, so most lawyers have downloaded both. Goodreader can display books, movies, maps, and pictures, while also providing the ability to annotate documents, zoom up to 50x, conduct a text search, and leap from point to point in the document with PDF hyperlinks. Goodreader allows lawyers to "flatten" PDF annotations, meaning those annotations are non-editable but are displayed in any application that has the ability to use PDFs. Goodreader was the #1 selling non-Apple iPad in 2010. Since Goodreader and ReaddleDocs are both very reasonably priced, there is no reason not to download both of them to see which one works best for you.

4. **Fastcase**

*Fastcase*

The Fastcase iPad app provides portable access to the entire Fastcase law library and legal research system, entirely for free. The app produces legal research results at an amazing speed, allowing the user full access to state and federal cases all over the United States. Additional services are available by upgrading to a full Fastcase subscription, but a subscription is not necessary for using the free iPad app for legal research. Ever been in a courtroom and wished you could look for a case to cite that you forgot to print? With the Fastcase iPad app, lawyers can do last-minute legal research without leaving the courtroom.

To write a review of Fastcase as a legal research tool or to read reviews written by other lawyers, click [here](#).

5. **Penultimate**

*Cocoa Box Design, LLC*

Penultimate is the app that turns an iPad into a legal notepad. Instead of taking notes with pen and paper, lawyers can use a stylus or even just a fingertip to write notes on the iPad by hand. Notes can be saved as a PDF or sent as an email in your
handwriting. Penultimate can also be used for sketching, diagramming, and anything else one might want to do on a sheet of paper (except for making paper airplanes). While the program may not be a complete replacement of paper for those who write in small print (which is difficult on Penultimate), it is a convenient way to jot down some basic notes, a phone number, or other information you may need on the run. And because it is erasable, Penultimate is a great tool for brainstorming ideas too.

6. **Circus Ponies Notebook**

*Circus Ponies Software*

*Circus Ponies Notebook* is a powerful tool for organizing notes, research, and even full case files. Some attorneys use Circus Ponies Notebook as their trial notebook in the courtroom, enabling a lawyer merely to carry an iPad around rather than be weighed down with boxes of transcripts, file folders, and all of the other piles of paperwork created in preparing for trial. With *Circus Ponies Notebook* on the iPad, a lawyer can keep case notes organized, use the search function to find any referenced word, jump from one document to another within the Notebook file, and take notes directly on the documents displayed in the file. There is even a voice annotation feature that can be turned on to make sure you never miss a word.

7. **Square**

*Square*

Want to accept credit cards with your iPad, or even your iPhone? Then *Square* is the credit card processor for you. By registering on their *website*, you can receive a free card reader that plugs into an iPhone or iPad to take credit card payments from MasterCard, Visa, American Express, and Discover card. There are no monthly fees, as you are charged a fee based on each credit card transaction. *Square* does not even run a credit check on you before accepting you into their program, though they also appear to take a little longer to pay than some credit card processors too. Nonetheless, apart from some payment delays the lawyers using *Square* seem to be happy with it so far. Take a look at *Square* to see if their system is a good match for you.

8. **TrialPad**

*Lit Software, LLC*

*TrialPad for the iPad* is a powerful tool for organizing case presentations for the courtroom. Unlike many apps which have merely been adapted by lawyers to use in
their practices, TrialPad was specifically designed by lawyers for use in the courtroom. TrialPad enables attorneys to organize, annotate, and manage their case files for court hearings, jury trials, mediation presentations, and other settings. To use a document or photo in TrialPad, it merely needs to be converted to a format compatible with Adobe PDF. Along with tools such as highlight, redline, and redact, TrialPad allows you to display images and exhibits using a projector or a monitor.

9. **iAnnotate**

*iAnnotate* is a PDF reader and annotation tool providing more power than most annotation apps. The *iAnnotate* app is one of the most important iPad tools for lawyers who want to go paperless because of the ease in which you can open documents from email, fill out forms, sign contracts, make notes, and mark documents through highlighting or underlining. If you make a mistake, just erase it with Undo, Redo, or Erase. The app can import Word and PowerPoint documents, and converts websites into PDF documents. Annotations can be "flattened" into the PDF so that no one can modify them after you send them out, and you can tab through multiple open documents.

**Suggested Reading**

- [Dropbox for Lawyers - Guide Review of Dropbox as a Law Practice Tool](#)
- [Mobility Tools and Applications for Lawyers and Law Offices](#)
- [Virtual Law Office (VLO) Technology and Issues](#)

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**iPad Apps for Lawyers**

![The Daily Record](#)
This week’s Daily Record column is entitled “iPad Apps for Lawyers.”

iPad Apps for Lawyers

A friend of mine from my Public Defender days who still works at the PD’s office recently emailed me and asked to write an article about iPad apps for lawyers. I was happy to oblige—especially since I regularly write about topics like this at my blog, the Legal iPad (www.legal-ipad.com).

First off, before you purchase any apps, spend some time with your iPad, think about your workflow and decide whether you plan to create content, consume content or both. This decision will necessarily affect which apps you choose to purchase. As I’ve oft repeated, creating content with the iPad is easier said than done and for many, it will be used primarily for content-consumption. Since iPad apps tend to cost quite a bit more than iPhone apps, you may as well avoid wasting your hard earned money and invest in apps that you will actually use.

If you plan to create content, including documents, spreadsheets, and presentations, you should consider purchasing either QuickOfficeConnect Mobile Suite ($14.99), which allows you to create and edit Microsoft compatible files or Apple’s productivity suite of apps, Pages (word processing), Numbers (Spreadsheet creation) and Keynote (presentation software), each of which costs $9.99.

A file management app is another important tool to have on your iPad if you plan to work with a large number of files. Absent a file management app, your files will be segregated inside of different apps. File management apps store all of your files in one place and some also allow PDF annotation. There are a number of apps of this type, but two of the most popular are GoodReader ($2.99) and Readdle Docs ($4.99), both of which, in addition to file management, also provide decent PDF annotation capabilities.

If your file management app of choice doesn’t permit PDF annotation, or if you would prefer a feature-rich PDF annotation app, there are a number of great apps to choose from that make it easy for you to mark up PDFs. Using these apps, you can input text, add written notes, highlight text and more. Some of my favorites include SignMyPad, iAnnotate PDF ($9.99), Readdle PDF Expert ($9.99), or Noterize ($3.99).

Many of the apps mentioned above sync with a number of cloud-based storage options, making it easy for you to access and import into the app documents stored in the cloud. For that reason, and for the sake of convenience, you may want to consider using a cloud-based storage app such as DropBox (free), the online storage option that is most likely to be compatible with most apps. Another option is Box.net, also free. These apps allow you to upload and stores your files in the cloud, so that you can access them anywhere, anytime, and from any type of Internet-enabled device.
Another way to access files using your iPad is to remotely access your desktop computer. There are a number of apps that facilitate this process, including LogMeIn Ignition ($29.99), Splashtop Remote Desktop ($4.99), Wyse PocketCloud Pro ($14.99), or Remote Desktop ($5.99).

There are also a number of legal-specific apps available that you may want to purchase. If you are a litigator, there are 3 different trial presentation apps: the RLTC Evidence ($9.99), Exhibit A ($4.99) and TrialPad ($89.99). An app that assists with jury selection is also available, Jury Tracker ($9.99).

Other legal apps include Lawstack, which includes, among others, the US Constitution, the Federal Rules of Civil and Criminal Procedure, the Federal Rules of Evidence, and certain state codes, including New York (free). LawBox (free) is another app that is very similar to Lawstack.

Finally, Fastcase (free) is a legal research app that includes cases and statutes from all 50 states and the federal government.

For more information on using your iPad in your law practice, check out the following blogs, in addition to my own: Tablet Legal (www.tabletlegal.com), iPadLawyer (www.ipadlawyer.co.uk), iPad Notebook (www.ipadnotebook.wordpress.com).

Nicole Black is of counsel to Fiandach & Fiandach in Rochester. She co-authors the ABA book Social Media for Lawyers: the Next Frontier, co-authors Criminal Law in New York, a West-Thomson treatise, and is currently writing a book about cloud computing for lawyers that will be published by the ABA in early 2011. She is the founder of lawtechTalk.com and speaks regularly at conferences regarding the intersection of law and technology. She publishes four legal blogs and can be reached at nblack@nicoleblackesq.com.
On this page you’ll find a running list of iPad apps developed specifically for lawyers. Aside from a few big aggregators, I’m not including apps for federal and state codes, laws, regulations, etc. simply because there are far too many of them.

The prices of the apps are accurate on the date that the app was included on the list, but may have changed since then, so be sure to check the iTunes store for the most up-to-date pricing.

My goal is to provide standalone apps that provide a tool or program for lawyers. Apps that are simply an extension of an online service or website aren’t what I had in mind for this list.

If you know of an app that’s missing, feel free to contact me and I’ll be happy to consider adding your app.

Trial apps
- TrialPad ($89.99)
- RLTC Evidence ($9.99)
- Exhibit A ($9.99)
- Jury Tracker ($4.99)
- iJuror ($9.99)
- Jury Duty ($39.99)

Legal research apps
- Fastcase (free)

Pre-trial apps
- The Deponent App ($9.99)
- iPleading ($9.99)
- Mobile Transcript for iPad (free)

Reference apps
- Black’s Law Dictionary ($54.99)
- LawStack (free)
- LawBox (free)

TECHNOLOGY
The iPad for Lawyers: All About Apps

By Tom Mighell | Apr.04.11 |

In the first post in this series, I made the argument for investigating whether the iPad can add value to the way you provide service to your clients. Today, in hopes of
persuading those of you with lingering doubts, I'll discuss the best part about having an iPad: The apps! The iPad doesn't run “programs,” not like you're used to on a PC or Mac, and most iPad apps are not as full-featured as software programs. Still, apps can do some amazing things.

Here are some of the apps that I recommend for the practicing lawyer.

**Being Productive.** The iPad is not the best device for creating legal documents, but it's a great tool for taking notes and working informally on legal documents. My favorite note-taking apps include Note Taker HD, Penultimate and WritePad. You can use a stylus or your finger to write in a notebook or legal pad-type page, then save those pages to PDF or another location. If you need to work with Microsoft Word or iWork documents, take a look at DocsToGo, QuickOffice Connect or Office2HD. Apple’s iWork suite (including Pages) is also a good investment for document and presentation creation.

**Reading Documents.** Although the apps listed above are great for working with documents, they just don't do the job when it comes to reading and marking up caselaw, briefs, contracts or other documents. My picks for apps that make iPad reading a joy include GoodReader, which will allow you to view just about any type of file, and iAnnotate PDF, a fantastic annotation tool.

**Legal-Specific Apps.** iPad apps designed specifically for lawyers are starting to make their way into the App Store, and there are some intriguing choices. You can find dozens of apps that provide access to your state's laws, the U.S. Code, CFR, Constitution and many other laws and regulations. Just go to the App Store in iTunes and search for “law” or “legal,” or be more specific if you know what you're looking for.

Beyond legislative resources, some of the better apps are designed to help lawyers at trial. One set of apps—including Jury Duty, Jury Tracker and iJuror—help you not only pick a jury but monitor jurors’ reactions during trial. Unfortunately, none of these does all of these, but hopefully future releases will include the complete functionality. Apps like TrialPad and Evidence allow you to present evidence to a judge or jury. You simply connect your iPad to a projector (using a VGA adaptor, purchased separately) to show PDF and image files during trials or hearings.

- **More Resources for Lawyers Who Use iPads**

  This is only scratching the tip of the app iceberg, and already I'm running out of room. With more than 60,000 apps designed for the iPad, it can be overwhelming trying to figure out which app is best. To keep up with the latest apps, for lawyers or otherwise, check out these resources:

  - TabletLegal by Josh Barrett
  - TechnoEsq by Finis Price

Author’s Comment – Well, as soon as my reviews of iJuror and JuryTracker were safely in the hands of Technology Editor Sean Doherty of Legal Technology News, and just in time for their brand-new site launch (looks great, by the way), I discovered that Jury Duty, yet another new iPad app, had just been released. Jury Duty is designed by Texas Attorney Stacy Kelly, priced at $39.99. I will be reviewing it for Law Technology News (see screen-shot preview at end of this article).

Also, for those of the WordPerfect persuasion (as many law firms are), you will be happy to know that there is a new iPad app just for you – the WordPerfect Viewer by Corel, only $4.99 (you heard it here first). This new app lets you read, search and place bookmarks in your .wpd files. Unfortunately, you cannot edit them. I’m sure that’s on the way soon.

If you know of any new legal-specific apps or other things you’d like me to consider for review, just let me know. If you have any trials coming up, I’d be happy to help out with that, too! Thanks for reading!

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In a recent article published in Law Technology News, "Two iPad Apps Make Their Cases for Trial," (see enhanced version here) I noted that the iPad is currently one of the hottest topics on the internet. To determine how attorneys and other legal professionals use iPads, I conducted an informal poll on LinkedIn. The results showed that, although the majority of respondents view their iPads equally, as a toy and a tool, the next-highest group used it more for work than play. And one important part of work in the legal profession is a jury trial.
Two iPad apps have been developed to aid in selecting and monitoring jurors: iJuror, from Front9 Technologies, and Jury Tracker, from John Cleaves, who recently shared how to "Build Your Own App."

Although both apps relate to the observation of jurors, each is focused on a different part of the process, and thus do not necessarily compete directly against one another. In fact, one might even want to utilize both apps in a jury trial -- something that won't make a big dent in your savings, at $9.99 for each. iJuror is focused more on the jury selection process, while JuryTracker is designed for use during trial.

iJUROR

When I first started iJuror, there were four buttons showing: New Trial, Saved Trials, Stats, and CLE Credit Tracker, which is actually just an advertisement link to another app in the iTunes store. Clever, but I can live without that one.

If you’d like to change the desk interface to walnut from the default mahogany, you can tap the options icon, which looks like a gear in the top right corner. The options window also lets you change the seat in which juror No. 1 is located, and whether you’d like your last-opened case to automatically start next time you launch the app.

One problem in setting where you place the first juror: the setting applies to all cases -- but not all courtrooms are set up the same. So if you have more than one case going at a time in different courts, you may have to reset the jury seating order on the app for each trial. It would be nice to save a jury seating template for each trial.

I liked the look and feel of this app -- the interface is like a legal pad, complete with a pen lying on it, and moving from task to task was akin to flipping through pages on a real yellow pad. After I set the juror seating order, the next option was to create a new trial. Once I entered my case name, date, and the number of jurors and alternates, I then tapped the Save New Trial button where my information was available from the Saved Trials list.

Since it takes a lot of data entry to create a case to work with, it would be nice if iJuror (and JuryTracker) was preloaded with sample case information to aid in quickly learning the app.

After I created a case, I opened it and entering the details of up to 60 prospective jurors. The layout of the interface is determined by how many jurors and alternates there are.
Most anyone who has been in trial with a jury consultant has played the sticky-notes version of musical chairs. Although sticky notes are a proven method of moving names and their information quickly around in a seating chart, it can be a little clumsy. In effect, iJuror can play sticky-notes, but doing the same thing on an iPad is just plain cool. I would expect professional jury consultants will be using this app, in addition to attorneys.

There are a couple of ways to enter information on each prospective juror. You can tap on an empty seat, which then brings up a form where you can enter their name, work, hometown, and additional notes. You may then tap on the top line, which opens up a dialog that looks something like a slot machine, with choices to "roll" into place: age, gender, race, marital status, number of children, education, and whether you generally like or dislike them.

The information you enter is also reflected in the icon on the desktop, including long or short hair, female or male, and skin color according to race. You can also select whether there are any familial relation with a police officer, if they have prior arrests, whether they have been a victim, whether they’ve served on a jury, and whether there was a verdict. These last few options also have an N/A option.

During voir dire and jury selection, you also have the ability to flag jurors for peremptory challenge, dismiss them for cause, or simply delete them. There is a Quick Enter feature, which allows you to quickly enter basic information: gender, race, and name. You can then complete the details later. Another option is a multiple-juror view, which allows you to view each juror and their attributes on one page.

Once you have details on the jurors, you can then drag and drop their icon to another seat (to perhaps dismiss and replace a juror), or into a Peremptory or Dismissal bucket -- each bucket shows how many jurors are in it and tapping on a bucket displays its contents. This is much more fun than sticky-notes.

Once you’ve reached the end of the day, or have completed jury selection, it would be nice to have this information available to discuss. In the upper right-hand corner is perhaps the most useful button of all -- it looks like an envelope. Tapping the little envelope will prepare a detailed report of everything you entered, and automatically generate an e-mail for you. E-mail the report to yourself, co-counsel, jury consultants, your client, or whomever you wish. That feature is quite a bit easier than photocopying an oversized sticky-note chart, or rewriting the whole thing. While the purpose and functionality of this app is somewhat limited (as you might expect from an app), it works.
JURY TRACKER

The first step in the process for Jury Tracker is to set up a new case file. While there is an option to select previously created cases, there is no sample case included. As noted above, sample data would be helpful to quickly learn the app.

Setting up the case information is somewhat automated, in that once you complete one field, you automatically advance to the next -- a nice touch. While some fields bring up the keyboard for data entry, others have a drop-down menu with a few common choices to select. Everything worked out nicely until I had to enter the number of jurors and alternates. I was forced to select either 6 or 12 jurors, and then from 0-2 alternates. There needs to be an option to enter any number in each of these fields -- especially with the introduction of laws such as California AB 2284, the Expedited Civil Jury Trials Act, which allows only eight or fewer jurors, with no alternates. The next step is to choose the jury layout.

In the Jury Layout (see Figure 3, below), you can quickly assign gender and race with a single tap; double tapping an icon will open its full details, which offer a similar set of input fields as iJuror.

Although JuryTracker is not very flexible with the number of jurors, and although iJuror seems to have an advantage with the jury selection process (since that is what is designed for), it begins to show its real benefit from this point forward.

Selecting the JuryTracker option brings up a screen showing icons with the names of all the jurors, with their gender represented by hair style (all brunettes), and race as indicated by skin color. A single tap brings up the Juror Observation screen, which allows you to select from a number of emoticons (think smiley faces) to assign to your juror, along with other notes, e.g., whether they are a key juror, and are leaning toward plaintiff or defense.

The TrialTimer is a handy stopwatch which may be used to keep track of how long each party is presenting. This can be a very helpful feature when time limits are imposed. It would be even more helpful if it prevented the iPad from going into sleep mode at around 5 minutes, which stops the clock. The clock did not count the time when the iPad was asleep. Note that there are helpful on-screen tips available throughout the app.

At the end of the day you can select the Reports icon, which lets you save juror information to a text file. The report can be e-mailed or exported to a CSV file and imported into a spreadsheet. Once in a spreadsheet, the report can be sorted by juror, party presenting, or juror responses. The format of the report is nicely detailed, including all of the information you’ve noted on each juror, and even
includes the date and time you made each entry. You can also generate a report showing how long each party has spent presenting their case. JuryTracker would be particularly helpful in long matters.

CONCLUSION

So, which app is better, and which one should you shell out $9.99 for to help you select and keep an eye on those jurors? Well, unlike my comparison of TrialPad and Evidence, where both iPad apps were direct competitors, in the right scenario, you might actually want to add both iJuror and JuryTracker to your i-Arsenal.

iJuror has its advantages for use during voir dire and the jury selection process (no more sticky-notes!), while JuryTracker helps you track each juror during the trial. For less than twenty bucks, you can get them both.

::: PRODUCT INFORMATION :::

iJuror (version 1.17) Front9 Technologies, $9.99
Jury Tracker, John Cleaves, $9.99

Ted Brooks, President
Litigation-Tech LLC
"Enhancing the Art of Communication"
213-798-6608 Los Angeles
415-291-9900 San Francisco

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**Top 10 iPad Apps for Lawyers**

Posted by Stewart R. Albertson on December 10, 2010

I’ve used my iPad for about a year now. It has changed the way I practice law—mostly for the better. Here’s my list of top 10 iPad apps for lawyers:

1. **GoodReader**. I recently appeared at a motion hearing where I was opposing a motion for summary judgment. Before the hearing, I was able to download all of my motion papers (as well as my opponents) all in GoodReader. I then sorted the motion papers into their own named files, and even bookmarked all exhibit and declaration pages so I could retrieve them quickly, if needed. I appeared at the hearing and relied solely on a blank legal pad, pen, and GoodReader. I found it much easier to find the documents or moving papers I was looking for in GoodReader, rather than fumbling with a thick file trying to find that one sentence in a declaration I needed to support one of my arguments. It may take some getting used to, but GoodReader makes it easy to find the documents and papers you need quickly during a court appearance.
2. **Outliner.** I use Outliner all the time—in client meetings, preparing for trial, taking and defending depositions, etc. I don’t know how I did depositions before Outliner. When defending a deposition I simply take notes of all issues the opposing attorney is going into when questioning my client. Timelines are simple to complete by using a function in Outliner that allows you to rearrange the outline as you take notes. If the opposing attorney jumps back to a different topic and date out of order, it is simple to start a new line item and then quickly move it to the place in the timeline where it should appear. After my client’s deposition is completed, I have a beautiful outline of the areas that I will see again at trial. This is a versatile app and well worth it.

3. **Penultimate.** There are other handwriting apps out there, but I use Penultimate. When I’m in a hearing and the court gives me the next hearing date, time, department, and reason for the hearing, I simply jot those items down with my finger as a pen. I then hit the email function and send the new hearing information immediately to my assistant who opens the email and adds the new information to my litigation calendar. Done. Now I don’t worry as much as I used to about missing a hearing because I forgot to enter it into my calendar when I got back to my office (due to being barraged by phone calls, clients, etc., when I get back from court). You can also use this app to take simple notes. I use Outliner for more detailed notes.

4. **NewsRack.** I use NewsRack to keep track of my favorite blogs. You can follow my blog on NewsRack as well.

5. **Twitterrific.** I use Twitterrific as my Twitter client. I am able to filter my message types into individual folders, i.e., Legal, News, Blogs, etc.

6. **Keynote, Pages, and Numbers.** I use all three. I plan on using Keynote for an upcoming bench trial.

7. **Instapaper.** I rarely use Instapaper to save web pages for offline reading at a later time (i.e., in an airplane). But I really enjoy reading the “Editor’s Picks” folder. I recent went on a cruise and ended up reading obscure articles out of the “Editor’s Picks” folder that I never would have read, but for Instapaper. I now have all kinds of interesting topics to raise at my next cocktail party.

8. **Pandora.** I recently heard a song by Neil Young and loved it. I have not listened to many songs by Neil Young. Pandora changed that. I selected the “Neil Young” station in Pandora and was treated to many other songs by Neil Young and his contemporaries. Best of all, it’s free.

9. **iAnnotate PDF.** My paralegal sent me a brief that I opened in iAnnotate PDF. I was able to make comments on the brief and email them back to my paralegal. She
made all the changes and it was sitting on my desk ready to sign when I got back to my office. I also use this app to review long deposition transcripts. You can mark them up as you go. Nice app.

10. **Friendly for Facebook**. I didn’t like using the iPhone Facebook app. So I downloaded Friendly for Facebook for iPad and I love it.