The introduction of presentation technology into the courtroom brings a great advantage to litigators. However, the proper execution of a presentation using technology involves careful planning. A recently concluded multi-week trial in federal court highlights a critical presentation component that often goes overlooked: What happens when courtroom presenters do not know how to use the technology? In this trial, plaintiff counsel split an opening presentation between two attorneys — both used an Apple iPad. Whereas one lawyer was comfortable with the chosen technology, his partner was clearly still learning how to use it. Their opening came across to all observers as hit or miss — but mostly miss.

THE OPENING

The technologically savvy plaintiff lawyer presented exhibits, called out paragraphs, and highlighted text. Even so, because this lawyer was focused on his opening statement, the critical portions of a document he attempted to call out and enlarge were clumsily done and difficult to read and, the highlighting focused attention on the wrong words. An important thing to remember: Presentation materials can sometimes become part of the Court record. Using technology imperfectly can cause consternation to your overall argument down the line.

The more seasoned plaintiff attorney, now faced with the addition of technology to a career of non-technologically driven opening statements, had issues with the mechanics of his presentation, as well as with the timing — many slides had to be skipped to comply with Court-mandated time restrictions. The result was a distracting, disjointed opening that reduced the effectiveness of the overall statement in the eyes of the judge and jury.

In contrast, the defense team came to trial with an experienced trial technology consultant who ensured that all equipment was installed on, connected to, and tested on the Court’s system prior to the start of the openings. The team’s opening statement was presented linearly via PowerPoint, which provided the litigators the ability to control the presentation with a remote clicker while presenting their statement within the time limits. In addition, the defense team’s trial technology consultant served as a backup operator if the remote clicker failed in any way.

The result was a seamless and effective presentation. Counsel focused on the arguments at hand and communicated their message to the jury effectively. The attention to detail in the presentation communicated to the jury and the Court a respect for their time and for the importance of the process.
PRESENTING THE EVIDENCE

After openings concluded and the trial moved on to the evidentiary phase, the witness direct and cross-examinations also proved challenging for the plaintiff counsel. The iPad they chose to use responded to their needs intermittently, and it was clear that the judge and especially the jury, were visibly irritated as both attorneys attempted to get the technology under control.

At a low point, the more technologically savvy plaintiff lawyer was working on impeaching a witness on the stand but could not get his key document onto the display screen. After wasting critical moments trying to pull up the exhibit, he became frustrated and, in an unfortunate moment involving the wireless microphone he was wearing, spoke loudly to his paralegal while demanding the exhibit in hard copy. Clearly, by this time, all the momentum and impact of his attempted impeachment was lost due to poor planning around the use of technology. Equipment works only as well as you plan for it to — and when it goes wrong, it can go wildly wrong.

Because of these complications, the plaintiffs’ litigator abandoned the use of the iPad and resorted to paper exhibits, which were not prepared for presentation use. Meanwhile, the Apple TV eventually “went to sleep,” so the jury became distracted by a screen saver that danced across the screen.

AND THEN THERE WAS VIDEO

Plaintiffs’ team opted to play video depositions from a PC (pre-edited MPEG files played in Windows Media Player) and present linked documents with the iPad. Remember the defense team’s trial technology consultant? Because of the consultant’s preparation, the defense team knew that the newly installed courtroom equipment had both HDMI and VGA inputs and monitors for the jury, the judge, and both counsel tables, as well as the witness. The consultant specifically prepared the defense team materials to work with that system. The only additional equipment brought into trial were a projector and a screen, which mirrored what was presented on the monitors.

Problems for plaintiffs’ team occurred when depositions were played and the screen was used only to display the documents, not the video. Prior to trial, the parties agreed to display video and exhibits and that each side would control its own presentation via projector and screen. The defense team agreed to this arrangement but only after their trial technology consultant worked through all the wiring and switching challenges to ensure that exhibits would be displayed properly.

The first three video witnesses the plaintiff team presented were short and had limited exhibits. However, they were forced to play video out of their intended order and failed to load their exhibits onto the iPad. Thus, exhibits were not displayed. The judge admonished the attorneys and advised them to do a better job for the jury’s edification. The next three-hour deposition presentation was slightly more successful. As the video played from the PC, exhibits were displayed on the projector screen from the iPad. This process was not timed and not precise. The plaintiff team tried to pull up exhibits as they were referenced in the video, scrambling to

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INSIGHTS

TIMING OF THE PRESENTATION WAS NOT EXACT, AND THE JURY HAD A DIFFICULT TIME LISTENING TO THE TESTIMONY WHILE READING THE NECESSARY DOCUMENTS.
find the paragraphs referred to and then highlight the specific language on the iPad. Timing of the presentation was not exact, and the jury had a difficult time listening to the testimony while reading the necessary documents. It was not a seamless presentation.

The defense team, in contrast, switched the projector input and displayed pretreated exhibits with trial presentation software via the consultant's trial laptop. As an exhibit was referenced, the jury saw the exact paragraph displayed, with the pertinent language of the paragraph highlighted without delay or confusion.

THE UPSHOT?

There are lessons to be learned to successfully use courtroom technology as intended — a tool that will strengthen an attorney's argument by helping him/her communicate the evidence to the jury. While the use of technology did not prove successful for one set of this story's litigators, we should take advantage of their mistakes by learning from them:

• Practice, and then practice some more.
• Before trial begins, investigate what technology the court system offers and if it must be reserved.
• Make sure that all your devices (including speakers) work once you are in Court but before trial begins. Make sure you do this every day of trial. Wires can come loose without anyone noticing.
• If you are not well-versed in presentation software or a device for trial presentation, practice by setting up transitions between documents and applications, as well as between devices.
• Work through the timing of your presentations with surgical precision so that there is never a need to jump around screens or stop to search for text.
• Have a technology backup plan for the moment technology fails — because it may. It is a tool and only as useful as it is set up to be.
• Be prepared with hard-copy exhibits that can be passed out to all the relevant parties in the Court quickly and in an organized manner.
• Understand the technology in the courtroom enough to troubleshoot issues that might pop up. Have in hand the name and phone number of the court information technology person in charge of the system.
• Turn off all screen savers and ringers/audio alerts.

OR DO JUST ONE THING:

Make room for a seasoned trial technology consultant on your litigation team so the trial team can focus on the case. This person will be litigation support and IT hybrid who will constantly and consistently consider all the above issues — plus more — before you even get into the courtroom.

ABOUT US

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