Trial Technology

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Trial preparation can be a stressful part of litigation. With countless exhibits, witness outlines and careful curation of opening statements and closing arguments, trial counsel can expect long hours of preparation in the weeks leading up to trial. Some shy away from relying upon technology at trial for fear of detracting from other aspects of trial preparation, distracting the jury, or risking user error in the presence of the Judge or jury. But with adequate preparation, technology is an effective and persuasive tool at trial. In fact, many Judges and juries now expect lawyers to utilize technology in their presentations. But to do so effectively, I would encourage you to follow these suggestions:[1]

1. Start Early: It is never too early to start preparing for trial. This should include identifying the exhibits, photographs and video files you intend to present. Equally importantly, you should strategize how you intend to present this evidence. While many of you still may utilize paper copies of exhibits and present them by using the courtroom overhead document camera (if the courtroom is so equipped), this can be time consuming and slow. By digitizing your documents, you can make your presentation more efficient through the use of various software (as discussed below).

2. Know Your Courtroom: As far as technology access goes, not all courtrooms are made equal. While some courtrooms may be fully equipped with overhead projectors, screensharing and wireless access, other courtrooms may only have one or two electrical outlets to share among four sets of counsel. I recommend that you and your trial team schedule a visit to the courtroom and plan out your presentation. This should include testing the point of view of the Court, jury and counsel as you present your evidence. If the courtroom is not equipped with everything you need, make arrangements to have that equipment set up in the courtroom. If you use a third-party company, check with opposing counsel to see if they will share in the cost—they will certainly make use of that technology too. Additionally, check with the Court's staff to see if the Judge has any preferences with respect to the use of technology in the courtroom. I would also check to see if wireless internet is available in the courtroom or if the Judge will allow counsel to use a wireless hot spot. If you do not have internet in the courtroom, you will want to ensure you have all of your exhibits saved locally on your computer.

3. Know your Tools: There are several different programs for presenting documents and other forms of media in the courtroom, such as Trial Director[2] or TrialPad[3]. These tools include features to emphasize important evidence through highlighting, underlining, or magnifying relevant portions of documents. CaseMap[4] is another program that allows you to build chronologies and sync deposition transcripts with the video-testimony. Another useful tool is PowerPoint[5] which can be helpful during your opening or closing statements or during witness examinations. Each of these tools are effective, but require a firm understanding on how to use them before you engage them in the courtroom.

4. Build a Good Team: As mentioned earlier, some of these programs are complex and require a fair amount of training and experience to utilize effectively. With the jury or the Judge watching, you will want to be proficient in technology. As a result, you want to make sure that the team that will be accompanying you to trial is knowledgeable not only about your case and the exhibits, but the technology that you will be using during the trial. This will allow you to effectively focus on the trial rather than worrying if you clicked on the incorrect icon in Trial Director.

5. Schedule a Run-Through: Before you pack everything up for trial, get your team together and run-through the exhibits in the same manner you intend to present them at trial. For example, if you intend to use video testimony to impeach a witness, you will want to do a run through on how to quickly access those questions in the video. This is easily done with programs like CaseMap. A run-through

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1 [Author's Note: This is not an exhaustive list of suggestions. I am sure those experienced trial lawyers reading this have other gems of wisdom that they follow in utilizing technology in the courtroom. I am merely providing my general thoughts and advice based upon my own experiences to offer encouragement to those that are hesitant to utilize technology in the courtroom.]

2 https://ipro.com/products/trialdirector/

3 https://ipro.com/products/trialdirector/

4 https://www.lexisnexis.com/en-us/products/casemap.page

5 https://www.microsoft.com/en-us/microsoft-365/powerpoint

can also familiarize you and your team with where relevant documents are electronically stored. The Judge and the jury may become impatient if you take too much time to find what they need to see. Also, if the Judge prefers pre-marked exhibits, make sure that your digital exhibits are pre-marked as well. This will avoid any confusion among the jury as to what exhibit you are publishing. I would also recommend a run-through IN THE COURTROOM to make sure there are no logistical issues you might not otherwise anticipate.

6. Be Prepared: Finally, make sure you have a backup of your digital exhibits on a thumb drive as well as a backup laptop in case your computer crashes. An extension cord in your trial box is also not a bad idea.

While this list is not exhaustive, this is the run-through of tasks that I perform when I am preparing for trial. By following these suggestions as well as those that each of you develop throughout your career, you can effectively and efficiently prepare for and utilize technology at trial.