

Trials and technology

By: F. Dennis Saylor IV and Daniel I. Small © April 29, 2016

Technology has transformed the nature, organization and presentation of evidence at trials. Its impact and benefits are undeniable, and there is no shortage of publications and presentations touting its wonders.

With the inevitable attraction of newer and better things, you may overlook the potential pitfalls they present. So beware: Problems lurk among those shiny toys.

Make no mistake — we believe in the use of technology in litigation. Technology has made huge improvements in the way information can be stored and presented in the courtroom. Exhibits can be magnified and displayed with great ease, and demonstrative aids can be created by anyone with basic computer skills.

But there are some ways in which technology can be a hindrance rather than a help. Especially if you are one of those people who use digital devices for everything, you should bear in mind the many disadvantages of using a laptop or tablet, rather than a three-ring binder, as your principal resource at trial.

1. Malfunction. Even with vastly improving technology, things will go wrong. Your laptop will freeze at the wrong moment. You will touch the wrong key, then endure the agony of trying to fix it with a whole courtroom waiting. And it may not get fixed.

2. Lack of readability. Some laptop screens are difficult to read from any kind of oblique angle. This makes it more difficult to glance at a laptop, unless you are in exactly the right position. Computer displays also are usually smaller and more cluttered than notebook pages and, therefore, harder to see.

3. Inconvenience. It is normally quicker and easier to flip paper pages than to manipulate a mouse or a ball, or even a touch-screen display. It's also easier, and less intrusive in a trial, to scribble a note on the margin of a written page than to type an entry into a digital device.

4. Barrier. The screen of an open laptop on a podium forms an additional physical barrier between the lawyer and the jury. It's one thing to have a colleague or assistant at counsel table working the computer; it's quite another to have that screen literally separating you from your witness and the jury.

5. Distraction. There is a magnetic attraction between your eye and the printed word, and somehow the computer screen has greatly increased the power of that attraction. Look around at a restaurant or other public place: People are spending time and money to be together with other people, yet, inevitably, many are looking at their devices. If your eyes are on the screen, you increase the risk that you will lose the jury.

6. Haste. Technology allows us to do amazing things at amazing speeds. Documents flash in front of us; highlights get drawn out; demonstrations flow and move; and much more. It may be flashy, but it also may be fatal to your case. Stop. Slow down. Linger over important exhibits or connections. The goal is to help the jury learn and understand, not to put on a light show. You should control the technology, not the other way around.

7. Generational differences. Some jurors, older ones in particular, may view the overuse of digital devices as an affectation. "Why does he always have to use that thing? Can't he just talk to us?"

Technology continues to improve at a rapid pace, and attitudes change as well (although not quite so quickly). This advice may well be obsolete in a few years. But in the meantime, think long and hard about whether you really want or need that laptop at the podium, and how far you want to go with technology.

Previous installments of Tried & True can be found at masslawyersweekly.com. Judge F. Dennis Saylor IV sits on the U.S. District Court in Boston. Prior to his appointment to the bench, he was a federal prosecutor and an attorney in private practice. Daniel I. Small is a partner in the Boston and Miami offices of Holland & Knight. He is a former federal prosecutor and teaches CLE programs across the country.

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