

Using technology in the courtroom

By: F. Dennis Saylor IV and Daniel I. Small ◉ June 28, 2018

Whatever may divide us as a society, we all seem to have one thing in common: spending hours every day staring at screens. Pretty much everyone has now become accustomed to the electronic display of information, with multitudes of photos and other graphics accompanying the (increasingly brief) text.

That phenomenon has clear implications for the courtroom, beginning with the way evidence and demonstrative exhibits are displayed to the jury. Technology has provided courtroom tools, including systems that permit the display of documents to jurors electronically, that have wonderful capabilities. And jurors like and expect visual displays.

But the ability to display documents and other items in court electronically has both advantages and disadvantages. The advantages are obvious, such as ease of display and the ability to highlight and juxtapose documents. The problems are less obvious and need to be considered.

1. Resist the temptation to flash documents quickly on and off the screen.

Jurors routinely complain about this. The fact that an exhibit can be quickly flashed on a screen and quickly removed doesn't mean that you should do it. Slow down. Use fewer exhibits and leave them up longer. Take time to focus on them. Let the exhibits sink in.

2. Resist the temptation to use more documents than you would otherwise.

Because computers permit us to organize and access more documents (and create more of them in the first place), there is a natural tendency to use more. Don't do this. Computers have evolved rapidly, but the human mind has not; people still can only process so much information. Plus, your marginal exhibits will tend to drown out your important ones.

Unless you like awkward pauses, don't ask questions at the same time that you're trying to locate files on a computer screen and click on them with a mouse.



3. Avoid trying to operate a computer and ask questions at the same time.

Keep your focus on the witness and the jury. Unless you like awkward pauses, don't ask questions at the same time that you're trying to locate files on a computer screen and click on them with a mouse (or touch them with a finger). If at all possible, get someone else to operate the computer.

4. Don't give your files difficult or exotic names.

Consider labeling Exhibit 17 "Exhibit 17," rather than giving it a Bates number (e.g., "AXQ000739258BZ") or name assigned by the computer. If you decide to describe it by its content, remember that you may be trying to locate it quickly with the eyes of an impatient judge and jury on you.

5. Practice, practice, practice.

Practice your use of electronics as much as possible in advance, and try to coordinate it with your questions and witness outline. The more you practice, the fewer things will go wrong and the better able you will be to react to those that inevitably do.

6. Have a backup plan.

Computers have a tendency to crash or freeze. Have a paper copy of everything, so you can show it on a document camera or (in the worst-case scenario) circulate it to the jury.

Dan had a high-profile trial years ago in which the judge brought all the lawyers in to have the clerk demonstrate the courtroom's new and very expensive electronic-display system. Two days into a three-month trial, none of it was working, and the jurors' individual high-tech TV screens became just resting places for the paper copies of documents handed out by the lawyers.

In short, don't be afraid to use the electronic tools available to you. On the whole, they're great. But they have their limitations, and they create new types of problems that have to be taken into account. And don't assume that the fancy gizmos are actually going to work.

Previous installments of Tried & True can be found here. 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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