07 Trial Practice

SECTION *of* LITIGATION
AMERICAN BAR ASSOCIATION

Making Sure the Tech Doesn't Wreck

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A PICTURE IS WORTH A THOUSAND WORDS

The screen has gone blue. The words on the screen read "A fatal error has occurred at ..." The jurors, the judge, court personnel, and, of course, your client are all looking at you. You break out in a cold sweat as you try to fix your computer. You yearn for the old days of flip charts and magic markers.

TECHNOLOGY ALLOWS LITIGATORS TO BOTH SHOW AND TELL

"Technology at trial keeps the interest of the judge and the jury," says Janice V. Mitrius, Chicago, Cochair of the Section of Litigation's Technology for the Litigator Committee. Still, she warns: "Don't ever go to trial expecting to use technology you've not tested. Every courtroom setup is different, and you have to be prepared."

In addition, it is critical that the material you intend to present electronically is admissible and does not give your adversary grounds to object, particularly if you intend to use it during your opening statement. Next, you must ensure that no glitches will occur with your computer equipment. Here is a brief nuts-and-bolts checklist:

- Has the screen been positioned so that all can see it?

- Are your slides, electronic charts, and other materials in the proper order, and has anything been left out?

- Which plugs are "hot," and is the power to your equipment controlled by a wall switch?

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- Has all data been backed up on disk, CD, or another computer?

- Have you brought extra cables, extension cords, power strips, and batteries?

- Can your equipment run all day without overheating?

- Have you tested the equipment before the start of each day of trial?

After you have acted to prevent these glitches, how do you make sure that your presentation will be persuasive? "Don't rely exclusively on computers," advises Todd H. Flaming, Chicago, Cochair of the Technology for the Litigator Committee. "You do not want the computer to draw attention away from you and your witnesses. Consider mixing up the images by using blowups or perhaps a felt board to build a time line."

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Many studies have emphasized that people remember only about 10 to 15 percent of what they hear, but retain 70 to 80 percent of what they both hear and see. For this reason, Mitrius advises that we "reinforce our points when we talk about them, depict them graphically, and then show them in writing." Technology allows litigators to both show and tell and also to present documents and information to everyone in the courtroom, in the sequence desired.

Steps for making a persuasive presentation include the following:

- Identify essential dates (including time lines in more complicated cases), witnesses, documents, and other evidence.

- Test the font and type size and both background and text colors for readability in the actual courtroom.

- Blacken the screen when you want the jury to focus on what you are saying or on a specific witness or exhibit.

- Switch to traditional charts and blowups when you want the judge and jurors to fix upon a distinct point.

- Avoid special effects that distract or confuse.

Psychologists tell us that the brain perceives motion first, shape next, and color last. For example, you are driving your car when you see something out of the corner of your eye—first, a movement; next, you realize it is a ball, not a child; finally, you notice that the ball is red.

As a trial judge, I find this is a good way to vet these presentations. I first review an electronic presentation to see whether it is fair. I then look at the shape of any graphics to make certain they accurately portray what they purport to depict. I then check the colors used in the exhibit to be sure they are not biased or misleading. For example, in an auto accident case, it is usually not good to color your client's car green and the other car red. That one is just too easy. ■