courtroom. Competence and likeability are important components of attorney credibility. Jurors will perceive trial counsel who appear unfamiliar, or unskilled, with the technology as less competent. Similarly, visible frustration or anger by an attorney because of technological problems can also cause jurors to dislike the attorney. Both perceptions can lessen an attorney's credibility with the jury, making it harder to successfully advocate his client's case.

The Future
Lincoln and Darrow were great trial lawyers because they understood how to communicate with the jurors of their time. They were students of human nature. While time has marched on and the tools available to trial lawyers have advanced, the need to remain students of human nature has not changed. As trial lawyers, we must continually keep our fingers on the pulse of society to recognize cultural shifts and determine how these shifts impact our job. Technology is one such shift. By embracing it, we can remain effective advocates for our clients.

Keywords: Litigation technology, presentation techniques, storytelling

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Your Electronic Evidence Presentation Will Fail: Lessons from the Frontline

By Brock A. Swartzle and Bonnie S. Kipp

Your electronic evidence presentation will fail. This prediction (some might even say "observation"), however, is no reason not to present evidence in an electronic form, as failures in one form or another are bound to occur throughout your trial or hearing. You might not get the exact answer you were expecting from a witness. Your judge might rule against you on an evidentiary dispute. Your jury might find one of the opposing side's witnesses more credible than your witness. These failures do not necessarily spell ultimate defeat, but they do present challenges that must be anticipated, recognized, and overcome.

Following are several vignettes about electronic evidence presentation failures. These have been fictionalized from experiences and stories from the courtroom and are intended to provide illustrations of "*not*-best practices." By learning from these mistakes, you can minimize your electronic evidence presentation failures and focus the judge and jury on what counts—your evidence and your arguments.

Do Not Let the Perfect be the Enemy of the Good

Do not let the perfect be the enemy of the good—the good will win almost every time. As in life, so in electronic trial presentation.

Prior to a patent trial, the judge instructed the parties' attorneys to present exhibits electronically. The plaintiff's attorney was operating on a shoe-string budget, so he asked his wife to learn the basics of electronic evidence presentation and operate as the plaintiff's in-court technician. She spent about five hours learning the basics of electronic evidence presentation. The defense attorney hired an expensive outside vendor with vastly more presentation experience.

As it turned out, the defendant overpaid. The outside vendor focused more on the precision and perfection of his presentation than on the goal of any litigation team, which is to present the evidence in the best light possible for the team's client. (Note that best light does not mean brightest light.) For example, the vendor's technician wanted everything to look perfect on the courtroom's monitors; when he would call a document up on the monitors, if the edges were not quite even or the document was otherwise less than perfect looking, the technician would take the document down from the monitor, try to edit the presentation, and then recall the document. He did this even though the judge and jurors had already started to read the document. He also repeatedly moved documents around on the monitor screen to position them more precisely. After several rounds of presentation by the vendor's technician, one juror was heard to mutter, "I shouldn't need a Dramamine to look at these exhibits."

In contrast, the attorney's wife's presentation required no medication to view. She learned the five or six essential things necessary to present electronic evidence, such as calling up exhibits, magnifying certain portions, highlighting as needed, and using the software to compare two exhibits side by side. She understood that presenting the evidence in the best light possible for the client simply meant getting the evidence called up with the least amount of distractions. If a document looked good, for example, but she knew it could look better, she left the document alone. Her presentation was effective precisely because no one noticed her during the presentation. Her husband's client won, and the judge even suggested to the vendor's technician that he stay after and learn from the plaintiff's "technician."

The Courtroom Entrance Does Not Read "Abandon All Hope Ye Who Present Electronic Evidence Here"

A mix of altruism and self-interest drives courtroom personnel, just as it drives almost all people. Accordingly, the vast majority of courtroom personnel want to help you, but even those who have no interest in helping you want, at the very least, to see all things go smoothly in the courtroom. Appeal to those drives by scheduling some time before the hearing or trial to test the courtroom's system and become familiar with the various outlets, cords, switches, and other electronic hardware.

A corollary of this suggestion is the following: Do not automatically blame the court's system or staff if something goes awry. During a trial over liability of an automobile accident, a technician tried to call up an exhibit when requested by the plaintiff's counsel. The exhibit showed up on the technician's monitor but not the courtroom's monitors. His reaction was to blurt out, "There's something wrong with your system, Your Honor! I can see it all on my screen: everything is fine on the computer monitor!" The technician looked flummoxed and even a little peeved at the judge. After a few moments, one of the courtroom staff members calmly walked over to the technician's computer, checked the USB port connection and, discovering that the connection was loose, pushed the cord securely back in. The exhibit appeared on all of the courtroom monitors and the plaintiff's counsel had to apologize sheepishly to the judge in front of the jurors.

Unfortunately for the plaintiff's counsel, his troubles were not over. The plaintiff's expert witness had prepared extensive graphs and charts on her laptop and anticipated being able to hook into the courtroom's system at the witness stand. This highly paid expert was well prepared and had left little to chance . . . except that she did not know about the Fn-F8 key combination that projects the laptop images to an auxiliary source.

When she could not call her first graph up on the courtroom's monitors, she was quick to cry out that it had to be a malfunction with the courtroom equipment. After another short pause in the action, the courtroom deputy suggested she try the key combination. The graph appeared. But once again, the jury was presented with a less-than-prepared presentation by the plaintiff's team and, perhaps more damaging, with several team members who were quick to blame their own mistakes on others. This could not have boded well for the plaintiff who was, after all, trying to prove that another party (the defendant) was at fault and liable for damages.

If Your Technician Testifies, that is a Bad Thing

Then there are times when a technician crosses the line from presenting evidence to giving evidence. During a trial over a contract dispute, a witness was testifying on direct examination about the contract in question. The contract had been called up on the courtroom's various monitors for everyone to see. At one point, the attorney asked, "Can you tell me what date you signed the contract?" The witness paused, apparently looking on the monitor for the date of the contract. Wanting to be helpful, the technician highlighted the date; the witness dutifully testified, "It was July 27, 2008." Opposing counsel objected, and the questioning attorney had no response. Objection sustained.

In a criminal drug trial, an attorney instructed her witness to look at an aerial photograph called up on the courtroom's monitors. She asked the witness to use the touch annotation feature to draw a circle around the house where a drug bust had occurred. As in the prior example, the witness paused a bit too long for the technician's liking, so the technician drew the circle around the house. Once again, objection sustained.

Finally, be wary of using too many of the system's bells and whistles. A technician had pretreated a number of exhibits prior to trial. He had added arrows, highlights, zoom-ins, and other features to all of the exhibits. When the attorney brought up the first exhibit, the jury saw all these annotations before hearing any testimony about the exhibit. The judge halted the testimony and ordered that the attorney have the annotations removed immediately.

The electronic presentation of evidence can be a powerful tool in almost any litigation. And, in today's world, electronic presentation is required in many courtrooms. Hopefully, the little doses of schadenfreude above can help you avoid some of these problems during future courtroom presentations. As with all aspects of litigation, advanced planning, careful preparation, and level-headed reactions are the best means to give you and your client an edge in presenting your evidence.

Keywords: Litigation technology, tips, failure, presentation

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Courtroom Technology—Rules to Live By

By John M. Eamigh

Judicial preferences and rules on the use of courtroom presentation technology vary from court to court and state to state, regardless of the jurisdiction. Some judges welcome the use of technology because they know firsthand how much time can be saved and how complex issues are more easily understood by the trier of fact when technology is used effectively. Others are not convinced, thinking of it as more of a sideshow distraction riddled with technical delays and poor planning—especially in the hands of novice presenters or green-horn technicians.

Technical problems can, and often do, present themselves at the most inopportune times, disrupting the rhythm of the examination and distracting the presenter as well as everyone in the courtroom. When taking on a technological presentation, it is your job as the presenter to ensure that the presentation runs smoothly. Using qualified technical personnel is one way to ensure your success. The technology should support your presentation by giving you what you need when you need it.

The following are important questions you should consider and steps you can take to help increase your effectiveness when contemplating the use of presentation technology in the courtroom.