

DIY courtroom tech for the trial lawyer

By David P. Pitre; Silbert, Garon, Pitre & Friedman; Gulfport, Mississippi*

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During a CLE program last year, I listened to Atlanta plaintiff attorney Lloyd Bell's presentation on courtroom technology. I loved it. He advocated a do-it-yourself approach (sort of like a one-man band) that appealed to me. Bell explained how to utilize TrialPad, a presentation app for the iPad by Lit Software, LLC, to maximum effect.

So, I decided to go all in on nearly all of his recommendations and spent the time and money to obtain the necessary equipment and software he suggested. I have only tried one case since purchasing the equipment: a three-day jury trial in state court against AT&T for its failure to properly flag and promptly bury a temporary service line.

This article recounts that path and shares a few technology lessons I learned during my career.

As technology has rapidly evolved, so has its use in litigation. Fifteen years ago, I was using courtroom technology in earnest, eager to take advantage of the latest and greatest techno offerings. My local county courthouse was one of the first in Mississippi to receive a technology grant for a full AV-presentation system.

I used that pre-installed equipment for a few jury trials with some success. (Alas, this plug-and-play courthouse system fell into disrepair and is no longer available, a victim of a poor state's failure to budget for adequate maintenance and training.) I also



David Pitre

gave CLE presentations to the Mississippi and Louisiana trial bars on this subject.

Truth be told, I probably overused the technology, to where it may have hampered rather than enhanced my effectiveness as a communicator. Over the last decade, I opted to use technology more sparingly to not interfere with the storytelling and presentation of evidence. That is still my

recommended approach. Often during my last trial, the TV was off and moved to the side. Also, how I visually present digital evidence evolved over time, especially in my openings and closings.¹

Does DIY tech make sense for you?

Foremost, you need not be a techno-geek to embrace this DIY approach. However, if you have to ask your spouse to show you how to change the batteries in the TV "clicker," then perhaps you should leave this to the experts and just focus on other aspects of your trial strategy (especially if you actually still use the word "clicker").

There are a lot of trial lawyers who geek out over technology way more than I do. I like gadgets, but I like getting paid and winning cases much more, which allows me to afford some gadgets. I cannot keep track of every latest invention, but I like to keep up with what is happening in the courtrooms where I litigate.

This DIY approach is ideally suited for a small firm or solo practitioner, which by definition encompasses most plaintiff lawyers. You need not be a "big" firm to use this technology. I try most of my jury trials alone, but regardless of who may be assisting me, one attorney is all that is necessary to effectively operate this equipment.

When, where, and how to use it

I have hired courtroom technology companies to assist in particularly high-value, document-intensive jury trials and will continue to do so. Trial attorneys understandably elect to use certain technology depending on the size and complexity of a case (plus the inevitable budgetary concerns). No matter how many six- or seven-figure recoveries and war stories we like to tout, in this state and especially in this post-tort “reform” age, we are all forced to occasionally try the so-called “smaller” cases.

This is where I hope to help you level the playing field. The obvious advantage of the DIY setup is that with a proper investment you can use courtroom technology no matter the value of your case. I am confident that you can use this DIY setup in more complex, document-intensive trials, but I admittedly have not yet ventured there.

Not every jury trial warrants spending several thousand dollars on courtroom technology and an experienced technician using TrialDirector or similar trial presentation software. You can also use the same setup to good effect for mediation/arbitration, hearings, focus groups, or even during depositions. You do not even need trial presentation software to gain some benefit from this investment. It can simply and economically present video deposition testimony or otherwise display digital images or computerized animation.

My one experience using this DIY technology was in state court, where public resources are limited and where courtrooms come in all shapes, sizes, and configurations. Generally, I strongly recommend against using any “in-house” technology (assuming the judge gives you the freedom to decide). I doubt I would ever opt to relinquish even partial control by using any built-in courtroom technology, especially in state court. Federal court may be different; at least it will have the resources and in-house technology staff to better assist you.

Because I obviously would be charging clients the hundreds, if not thousands, usually associated with courtroom equipment rental from a third-party vendor, I briefly toyed with the concept of figuring out a way to pass some of the cost of this investment to them. Ultimately, I decided against any “usage” charge.

Besides the ethical concerns involved in figuring out this approach, a wise attorney simply told me: “Don’t worry; it will pay for itself after your first loss.” Writing a fat check to a courtroom technology company after a defense verdict can be painful. Fortunately, I haven’t yet experienced the agony of defeat with it, but I bet that TV would feel a lot heavier hauling it to the car² after a loss.

There are admittedly some disadvantages to this DIY setup. Courtroom technology companies offer such options as multiple monitors for counsel and the witness, and even annotation monitors for witnesses that allow them to mark an exhibit with notations that can be printed for later viewing. Outsourcing the courtroom technology provides more flexibility to deal with any “curveballs,” and there is no substitute for an experienced technician whose sole job is to ensure the smooth and uninterrupted presentation of digital evidence.

For those attorneys who would like to use their iPad to present evidence but without the hassle and expense of a complete DIY equipment setup, some courtroom technology companies will rent the “unmanned” equipment at a reasonable price. The busy practitioner may elect to outsource the creation of a slideshow for opening, closing, or for specific parts of a witness’s examination.³

You can also enlist a graphic design professional for the creation of timelines or other visuals that you can use in either courtroom setup (DIY or out-sourced).

Equipment and software apps

As Lloyd suggested, I purchased the following equipment and software, which is available from Amazon, Apple’s App Store, and other online retailers:

- **TV:** 55 inch, flat screen (\$400+)
- **Mobile cart and stand:** Loctek (\$135)
- **Apple TV:** 4th generation (\$150)
- **Apple AirPort Express:** Wi-Fi station (\$100)
- **Speaker:** Beats Pill+ (\$170; ensure you have the correct audio cabling between devices)
- **Protection case for TV:** Webster’s XL (\$250)⁴
- **Wireless presenter pointer:** Satechi (\$40)⁵

David E. Cole, B.S., J.D.

CDR (ret) 20 Years U.S. Coast Guard
Consultant and Expert Witness in
Maritime and Admiralty Matters
Established 1998



817-571-7731

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- **HP Deskjet 3755:** Wirelessly print screen captures or annotated exhibits for entry into evidence (\$70)
- **Ultimate Litigation Bundle:** TrialPad, Transcript-Pad and DocReviewPad (\$300)⁶
- **Apple iPad:** I already owned one; current models range in cost from \$330 to \$1,000+.
- **Miscellaneous items:** AV and electrical cords, ties/twists, Velcro, gaffer tape,⁷ mounts, etc. (estimated \$150)

The Apple TV mirrors your iPad presentation software to the TV screen via the Apple AirPort Express. Its closed Wi-Fi network provides the stability and security to present your case electronically. For about \$2,000 plus the cost of an iPad, you can have your own mobile courtroom technology setup.

Additional items to accompany this setup may include a document camera; a DVD player as a backup; a wireless printer;⁸ and a second, smaller TV for the judge to view at the bench (which would require a HDMI splitter and extra cabling to divide the signal).

Lloyd Bell strongly recommended using a portable document camera. He's probably right, but I have not "pulled the trigger" on one yet. I tried the Elmo MO-1 (\$350)⁹ and a wireless device, Ipevo iZiggi HD (\$160). Both are fine pieces of equipment and worked as advertised; however, after a short test run I returned them because I do not foresee an overwhelming need for them, especially if the exhibits are pre-marked and pre-loaded into TrialPad.

During my last trial, I used a wonderful, inexpensive iPhone app called Scanner Pro to quickly scan a few key jury instructions and then import that into my TrialPad using Dropbox. We haggled over one jury instruction involving spoliation for days, and it was not finalized until moments before the jury was called back in for closing argument, so time was of the essence. A document camera would have made things quicker and undoubtedly easier, but my approach was doable.

For those who may be a little hesitant about using technology in front of a jury, TrialPad is easy to use and the app's help links are straightforward and clear, which is a good thing because telephone technical support does not appear to

be readily available. TrialPad's controls are very intuitive, and with a little practice you will be up and running.

On the other hand, if you are not comfortable utilizing an iPad and its many apps, you should probably avoid this approach or hire a technology company to assist you in court. TrialPad's features cannot compare to all the bells and whistles of the latest/greatest trial presentation software, but for the DIY-courtroom tech-lawyer who sufficiently prepares in advance, it has everything needed to present your case.

Plan ahead

One of the keys to utilizing courtroom technology on your own is early implementation of a detailed scheduling order (not unlike the type one finds in federal court). This approach will also benefit the practitioner who elects to out-source the technology. The sooner your evidentiary issues are worked out, the sooner you can load TrialPad with pre-marked exhibits and spend the days leading up to trial focusing on witnesses and fine-tuning your opening and closing.

Failure to plan ahead means you may be fiddling with TrialPad the night before or — worse — the morning of trial.

The scheduling order should include early deadlines for the exchange of exhibits to resolve any disputes over authentication and redactions. The order should also provide for a pre-trial motion deadline to resolve any motions *in limine* and other issues and objections regarding deposition testimony. (It would be difficult, if not impossible, to present a video deposition using TrialPad if the edits have not all been previously agreed upon.)

Presenting multimedia audio and video files using TrialPad is easy provided you comply with its file-format requirements. You can even screen capture a frame of video to display as a still image. I recommend always screen capturing the court reporter's administration of the oath, whether to emphasize the duplicity of a witness on cross-examination or (hopefully) to underscore your client's truthfulness.

Do not forget to first go through the mechanics of formally introducing into evidence any photographs or other documents to be displayed on TrialPad during opening statement.

Understand the particulars of your courtroom environment. Speak to the judge or his/her staff well before trial regarding the judge's preferences and pet peeves for courtroom technology.

The placement of a large TV presents its own challenges given the myriad of courtroom configurations across your state. During my recent trial, a juror complained that the TV blocked his view of the plaintiff during some presentations, so we quickly repositioned it with the court's blessing. The advantage of a mobile cart is that you can quickly wheel it into any position and then move it back out of the way.

Lawyer beware

It is imperative that any lawyer relying upon courtroom technology develop an immediate backup plan if any part

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of the technology fails. This is especially true for the DIY-courtroom-tech lawyer who has no one else to blame for any delays or technology hiccups. You must be prepared to quickly shift to the traditional (*i.e.*, non-digital) presentation of evidence or else you risk looking like a bumbling idiot who got “too fancy” and crashed and burned.

The backup plan should include the enlargement of any key exhibits that you or your witnesses expect to reference during direct or cross-examination. I also recommend that you burn to a DVD any video that you intend to present through TrialPad so it will be ready to be played on a moment’s notice. And in case that too fails, you should have a printed deposition transcript with final edits and a proposed reader on standby.

Mirroring your iPad to a large TV screen in front of the jury comes with its own potential land mines. Common sense dictates you remove all wallpaper backgrounds and any irrelevant or goofy apps from your home page and the adjoining page. Because my iPad Pro included a cellular connection, I disabled my messaging feature so a personal text could not flash on the screen during closing argument.

During my recent trial, I even turned off my cellular data connection, which removed the name of my cell phone company from the top of my iPad display, and thus the jury did not have to wonder why the plaintiff’s attorney spending three days hammering AT&T over its incompetence was also its customer.

Admittedly, courtroom technology is not for everyone. Many skilled and successful litigators have no need for such extras. On the other hand, if an adversary utilizes the technology to good effect against you, then you are already at a disadvantage. Using courtroom technology will not make you a better trial lawyer, and if misused or overemphasized, it could make you worse.

Technology should not overwhelm your presentation, especially during opening and closing. Ideally, it should augment and enhance a trial attorney’s presentation. Jurors simply expect crisp, easily understood, and readily visible evidence. Today’s jurors are technologically savvy, and studies show that the proper presentation of electronic evidence can increase jurors’ information retention.

We all understand that we should not just tell them . . . we should show them. The DIY approach discussed here hopefully makes that task more feasible for the trial lawyer.

*David Pitre is licensed to practice in Mississippi and Louisiana. He is a past president of Mississippi Association for Justice.

Endnotes

1. Consider using Prezi, an online presentation tool that takes PowerPoint and Keynote to another visual level. I also recommend Timeline 3D available on the App Store. Here’s a link to a Prezi timeline that is somewhat similar to one we

were preparing for a case that settled before trial:

<https://prezi.com/akftbyarj-ot/mayan-civilization-timeline/>.

2. A fifty-five-inch TV is BIG. Do not go “all in” on this approach if you do not have access to an SUV or a vehicle large enough to transport this equipment.
3. If you use PowerPoint during trial, consider the following book by Cliff Atkinson: *Beyond Bullet Points*. The author’s approach focuses on discarding the boring, linear, text-intensive approach that became the default format for many PowerPoint and Keynote presentations.
4. Lloyd Bell recommended a custom hard-shell case on wheels with foam inserts for the TV and other equipment. I decided not to spend \$900 on a case to lug around a TV that costs at least half that price and instead opted for a relatively inexpensive soft-shell, padded TV case typically used by moving companies. See webstervtcases.com, georgiacase.com, or the websites of similar companies for more information.
5. The Satechi device is recommended for its ability to control your presentation remotely by advancing slides and images wirelessly via Bluetooth. Note that its included laser pointer feature will not work well with a TV image, so a traditional telescoping pointer is recommended for pointing to a displayed image on the TV. Although TrialPad gives you the option to highlight or point out certain parts of an image, a witness has no such option unless you assume the risks associated with handing over your iPad. Of course, an index finger works, too.
6. You really need only the TrialPad app (\$130) for courtroom presentation, but I highly recommend purchasing the bundle if you are comfortable working off your iPad. Transcript-Pad is great for reviewing depositions. I have not yet used DocReviewPad in a case, but I expect to soon.
7. Do not use duct tape. Gaffer tape (widely used in TV, theater, film, and music production) is nearly as strong, can be torn by hand, and is easily removed because it lacks the messy permanent glue residue that occurs with duct tape and similar products.
8. If an attorney or a witness on an iPad annotates an image using one of TrialPad’s features, you will need to “capture” or otherwise save that annotated image and thereafter print it for inclusion in the record. If you really need a witness to annotate a document, you may have to go “old school” and use an enlarged exhibit or otherwise outsource the necessary equipment. I can foresee the possibility of having a well-trained “friendly” witness take my iPad to annotate a TrialPad image in front of the jury, but I could never see handing over my iPad to a hostile witness in the middle of cross-examination.
9. Note that Elmo’s latest product is the MX-1 with Connect Box (\$450) offering HD resolution via an HDMI connection to your TV.