

iPad for Litigators

United States District Court
District of New Hampshire

RECOMMENDED APPS

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TABLE OF CONTENTS

Recommended iPad Applications for Lawyers

- Reviewing, Annotating & Organizing Documents
- Word Processing
- Document Transfer
- Taking notes, Making Lists
- Presentations
- Research
- Remote Desktop
- Creating Outlines
- Creating Flowcharts
- Trial Applications

Using the iPad with a Projector

- Apple TV
- Apple VGA Adapter
- Reflector and AirServer
- Hitachi USB Dongle

Trial and litigation iPad Apps for Lawyers

- Jury Selection iPad Apps
- Trial Presentation Apps
- Pre-trial iPad Apps

There's an App for that? Using Technology to Prepare and Defend Your Case

- Doing Lawyer Things on your iPhone and iPad
- Timekeeping
- Dictation
- Case Management & Discovery
- Document Management
- Legal Research
- Depositions
- iPad in the Courtroom
- Voir Dire
- Evidence
- Outside the Office

There's an App for Law Firms

Cintrix Model

The Next Big Wave: Custom Apps

The iPad for Litigators: Storming the Courtrooms

The Downsides

Apps for Lawyers

Court Days Pro

Idocument REVIEW

The Deponent

TranscriptPad

iJuror

TrialPad

ExhibitView

BT Chat HD

Keywords

Getting the Most Out of Your iPad During Litigation

Transferring Files

Slide Presentation

Exhibit Presentation

Display

Documents to Go - Office Suite

iPad Trial - Notes from the Courtroom Part 3

TechnoLawyer Blog: A Special Report on Tablets in Legal Industry

Paper Replacement

Remote Control of Your Mac or PC

Laptop Replacement

Legal-Specific Apps

My Tablet Usage (For Now)

How to Receive TI NewsWire

Technology in the Courtroom Trial lawyers Find New Ways to Use the iPad to Help Try Cases

iPads in Deepwater

Litigation: Trial Technology

iPads at Trial
Soldiers of the Patent Wars
Courtroom Drama
Best Courtroom Projectors
Gambling on New Trial Technology

Vermont Bar Association - Cloud Opinion

Opinion 2011-5
Opinion 2010-6
Dual Professions, Opinion No. 2011-1

Massachusetts Bar Association: Opinion 12-03

**Maine Opinion #194: Client Confidences: Confidential Firm Data Held
Electronically and Handled by Technicians**

Recommended iPad Applications for Lawyers

- 1) **Reviewing, annotating & organizing documents** (these apps work with file transfer tools such as DropBox, WebDav, Google Drive and FTP Servers)



PDF Expert (fillable PDFs, annotate & flatten PDFs) \$9.99



GoodReader for iPad (read, annotate PDF and other documents) \$4.99



iAnnotate PDF (PDF annotation) \$9.99

- 2) **Word Processing**



Pages \$9.99



Documents to Go - Office Suite \$9.99



Quickoffice Connect Mobile Suite \$14.99



WordPerfect Viewer (essential to view--not edit--WordPerfect documents on iPad) \$5.99

- 3) **Document Transfer**



Dropbox (Sign up on the web and then download the free dropbox application. You can also input your dropbox credentials into almost every word processing or text creation application available for the iPad, and your files are then instantly available to you on your ipad.) Free



FileBrowser \$4.99



Google Drive Free

4) Taking notes, making lists



[Plain Text](#) Free



[iA Writer](#) (adds extra functionality to the default iPad keyboard) \$0.99



[Elements](#) (syncs with Dropbox; clean and simple interface) \$4.99



[Evernote](#) (Sign up on the web and then download the free Evernote application for your iPad.) (There is also an Evernote app for the Blackberry.) Free



[Dragon Dictation](#) (Speak and it automatically converts voice to text.) Free



[SoundNote](#) Allows you to take notes and record at the same time so that you can later go back to clarify your notes with exactly what was said. Warning – must get permission before recording in 2 party consent states. **\$4.99**

5) Presentations



[Keynote](#) \$9.99



[Prezi](#) Free Free flowing and more dynamic presentation software. Need web based program as well for full functionality. Free

6) Research



[Westlaw Next](#) (Westlaw research app) Free



[Rulebook](#) (access federal rules, take notes, keep bookmarks) Free



[Lawstack](#) (access federal rules, the Constitution -- and more) Free



[Fastcase](#) (free search of state and federal cases and statutes) Free



[LawBox](#) (all federal rules, 28 USC and Constitution, well as selected state statutes) Free



[Dictionary](#) Free

7) Remote Desktop (access and control your office computer from your iPad)



[Wyse Pocket Cloud Pro - RDP](#) \$14.99



[Remote Desktop Lite - RDP](#) Free

8) Creating Outlines



[Outliner for iPad - CarbonFin](#) \$4.99



[OmniOutliner](#) \$19.99

9) Creating Flowcharts



[iThoughtsHD](#) (mindmapping) \$9.99

10) **Trial Applications**



Transcript Pad Allows for annotating and outlining depositions. \$49.99



Trial Pad Integrated trial presentation application. \$89.99



Trial Director Free but you have to have the overall package from InData \$695. If you already use Trial Director, this might be a worthy app to use.



Exhibit A Exhibit Presentation Application similar to Trial Pad. \$9.99



iJuror Keep track of your jurors before and during trial. \$19.99

Using the iPad with a Projector | Academic Technology @ Palomar College

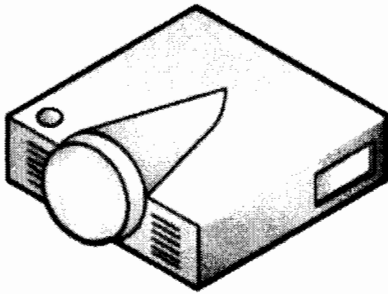
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Using the iPad with a Projector

Posted by [Terry Gray](#) in [Apple](#), [AV Technology](#), [iPad](#), [Windows 7](#) on Aug 24th, 2012 2:21 pm | [2 comments](#)



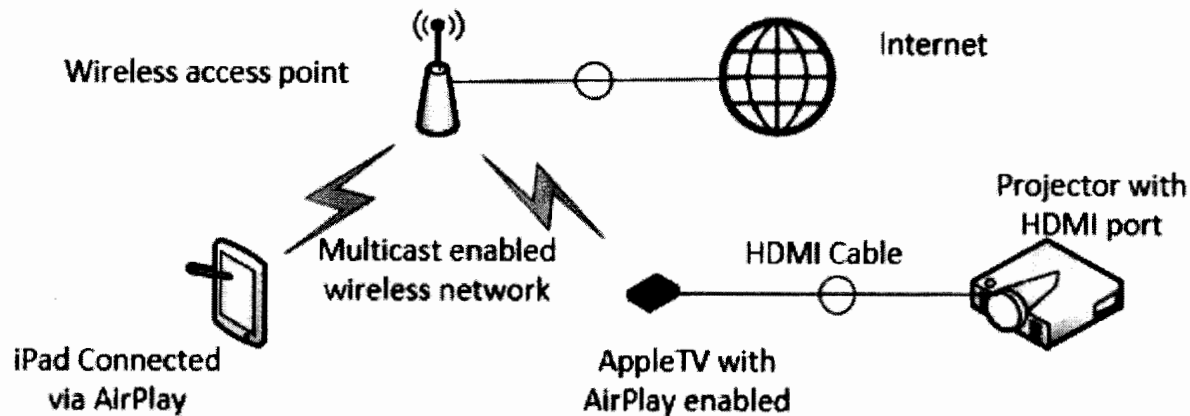
A surprising number of faculty members at our institution own iPads. I know, because I recently had the opportunity to present a short iPad Ed workshop which was well attended, and I asked. As I say, a surprising number of hands went up. Part of the workshop was what I intended to be a brief discussion of using Apple TV to wirelessly project in the classroom, but the discussion was not so brief because there was a great deal of interest in the iPad and projection technology. Thus, this post, on the various ways to use the iPad with a classroom projector, both wired and wirelessly.

In the discussion below, I will be referring to the iPad 2 and new iPad (commonly called iPad 3 or third generation iPad). The products and technologies discussed will generally not work, or not work completely, with the original iPad. There are also some rare apps (that I have read about, but not actually seen) that simply will not output video, and these will also not work with the solutions outlined below, though I have tested many apps and could not find one that would not output video. I

did my testing with the Hitachi CP-X3015WN projector, except in a couple cases where I tested on one of our older EIKI projectors.

Apple TV

My favorite projection solution, because of its elegance and simplicity, is to connect an Apple TV device, via an HDMI cable, to the HDMI port on the room projector, and then connect the iPad wirelessly to the Apple TV device via Airplay mirroring. Problem solved. The lecturer is free to roam around and room, displaying through the projector anything that appears on the screen of the iPad, including hand written annotations in apps that accept them (like Educreations or Explain Everything, which can even be recorded at the time of the lecture).



Here are the particulars:

1. The iPad and the AppleTV device (a 4" hockey puck with an HDMI out port) must be connected to the same wireless network.
2. The wireless network MUST be multicast enabled.
3. The AppleTV must be connected to the projector's HDMI port by an HDMI cable.
4. AirPlay must be enabled on the AppleTV.
5. The iPad must connect to the AppleTV via AirPlay and AirPlay mirroring must be enabled on the iPad.
6. The projector must be in HDMI mode.

Here are some things to know about the implementation, in general and at our college in particular:

1. At our college, the open, publicly accessible wireless network, called "InternetOnly" is multicast enabled, so wherever wireless networking is possible this projection solution is also possible.
2. The cost of the AppleTV device is \$99. The cost of an HDMI cable is around \$20. I used an in-wall 40-foot CL3 HDMI cable for our two library classroom labs, and a 25-foot external CL2 HDMI cable for our faculty lab. Both have worked well.
3. The real "gotcha" with this solution is that almost all of the projectors on our campus DO NOT HAVE HDMI ports. The newer projectors do have a single HDMI port. I used the Hitachi CP-X3015WN in my tests—but wonder why they only have a single HDMI port when multiple ports would be more useful. They also have lots of other nearly useless legacy ports, but that is

another issue. Since most of our projectors do not have HDMI ports, one of the solutions mentioned below will be apt for most users.

4. Since most of our projectors do not have HDMI, you may be tempted by one of those HDMI to composite/S-Video converters. We actually tested one, but the quality of the projected image, at least using our standard EIKI projector, was, in our opinion, completely unacceptable. We cannot recommend using such an adapter.
5. When setting up the AppleTV, be sure to password protect the session (General > AirPlay > Set Password). The security on the AppleTV devices is clearly intended only for the home market. You do not even need to know the password to change the password. All you need is an AppleTV remote. Nonetheless, a simple password protected session should be sufficient for most academic purposes.

One of the really nice features of this solution is that anyone with an iPad can mirror their screen to the projector, not just the professor, provided they know the password on the AppleTV device (professors will ponder the significance of changing the password if they use this feature).

Another nice feature with this configuration is that it lets you bypass the classroom computer entirely, so you can have a separation presentation set up on the classroom computer, and quickly switch back and forth between the iPad screen and the computer screen by simply selecting inputs on the projector.

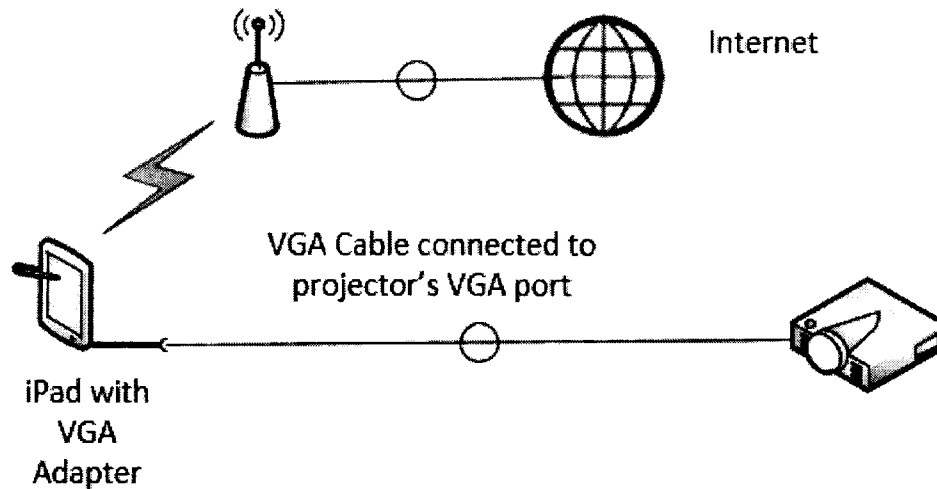
The image quality is excellent, but will be as large as the scaling in effect on your projector, and this will vary by projector. When playing video (and this solution had no trouble with HD 30fps video) the video expands to fill the screen. Video motion is smooth and colors are true. Video, however, will play only through the projector and will not be mirrored to the screen of the iPad.

Apple VGA Adapter

For those with a projector that does not support HDMI, a simpler solution may be to purchase the Apple VGA Adapter (\$29 plus tax). The down side of this solution is that you are tethered to the projector, and cannot walk around as you present.

Since most of our classrooms are equipped with a second VGA input to the projector (that blue, 15-pin D-shell adapter lying about on the lectern or podium) it can be plugged into the VGA Adapter and by simply changing from computer 1 to computer 2 on the projector input the instructor can project from the iPad. (Once again, be sure to use an iPad 2 or 3, not the original iPad with this solution. There are serious limitations to the VGA adapter and the original iPad). This solution also has the disadvantage of not being shareable, if you want your audience to share what is on their iPad screens. It also has the disadvantage of not carrying audio. You need a separate audio cable (and only some of our classrooms have an extra audio cable, which would plug in to the iPad's audio out earphone jack).

Apple also makes an HDMI Digital Adapter (\$29 plus tax), but since most of our projectors do not have HDMI ports it hardly matters. Furthermore, if you do have an HDMI port on your projector, the AppleTV solution seems far superior to me.



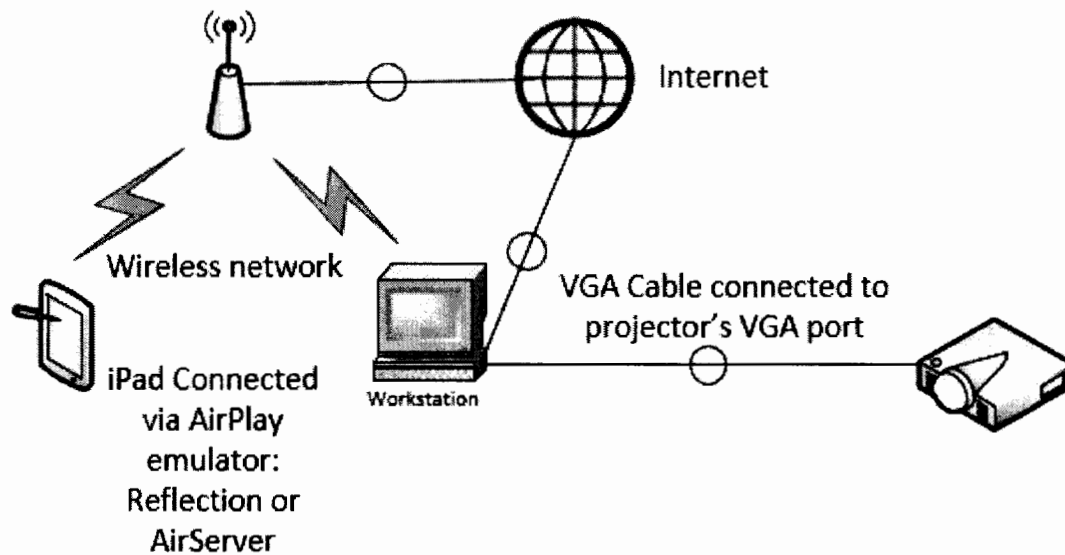
Screen mirroring and video display fine through the VGA adapter.

Reflector and AirServer

Note: The app mentioned in this section called “Reflection” has changed its name to “Reflector” and the web site is now at <http://www.reflectorapp.com/>.

A software-based solution may be the best for most users, considering the vintage of our projectors and classroom computers. It is cheaper and easier to implement by far than the Apple TV solution, and allows for untethered presentation, giving it a leg up over the VGA adapter solution. There are a couple of screen resolution and bandwidth issues to be aware of related to video quality, but overall this is an excellent, inexpensive solution. Here are the details.

Reflector (\$14.95 downloadable software, with discounts for bulk purchases) and AirServer (\$14.99 for Mac, \$7.99 for PC with bulk discounts) are software AirPlay emulators, allowing PC or Mac workstations to act as the AirPlay host for the iPad. In other words, once these client programs are installed, you can mirror your iPad 2 or 3 (or iPhone 4S) to your PC or Mac. Then, provided the PC or Mac is wired to the classroom projector via VGA and audio cables, mirror your iPad screen through the room projector.



Of the two products, I much prefer Reflector because it has screen recording functionality. That's right. Not only can you display your iPad screen while remaining untethered from the projector, but you can record it too on the host workstation. It is important to realize, however, that the audio recorded is the system audio. That is, you cannot record voice over audio while displaying. But, of course you could if you captured the workstation screen in a program like Camtasia while presenting. We have tested this and it works fine.

Here are some considerations to be aware of:

1. Reflector requires Mac OS X 10.6.8 or above, or Windows XP or above.
2. AirServer runs on a Mac running OS X Tiger / Leopard / Snow Leopard / Lion / Mountain Lion (Intel/PPC) or a PC running Windows 7 or Vista.
3. Reflection screen recording requires Windows 7.
4. Windows Firewall must be set to allow AirPlay connections. This should occur automatically during PC installation, but if not, it is easy to setup manually.
5. Your iPad 2 or 3 and your classroom workstation must be on the same wireless network. This could be an issue, because many of the older classroom workstations on campus are not equipped with wireless connectivity, though they could be with the addition of an inexpensive USB wireless dongle. This should be a minimal issue if the professor is providing her/his own laptop because laptops are likely to have built-in wireless adapters.
6. Full-screen 1080p video can cause Reflection to stutter. If you have problems mirroring full-screen video, lower the workstation screen resolution (to 1280 x 720, for example) and try again. I got mixed results in my tests.
7. Activation with AirServer was a bit funky, requiring registering an email address when you make the purchase. Activation with Reflection was more standard, with a license key being issued once the purchase was made.
8. Both Reflector and AirServer allow for free trials. Reflection for 10 minutes (though as many 10-minute sessions as you want); AirServer for 7 days.

Both worked extremely well in displaying mirrored app and video content through a typical classroom projector.

The Hitachi USB Dongle

Just to be complete, I read the manual that came with my new Hitachi projectors and learned that there is a wireless dongle that can be purchased (about \$100) for the CP-X3015WN (and several other) projectors. I thought this might be a solution for wireless broadcast to the projector, but on testing it turned out to use such low bandwidth, and reset the client workstation to such a basic color depth, that it proved to be useless. Transmissions through the dongle were very slow and delayed, with audio echoing after a notable delay after it plays on the workstation and video being unwatchable.

I also found a new iPad app that purportedly connects Hitachi projectors to iPads for wireless transmission, but could not find supporting documentation other than a single web site in Japanese. The app is available through the app store and is called Projector Quick Connection, or PJ Connection. Unfortunately even though my projector was listed as being supported, and the app could see the projector, it could not connect to it after repeated tries. Chalk it up to not ready for prime time. This app might be worth watching over time, however, unless it's performance is as bad as the Hitachi wireless dongle.

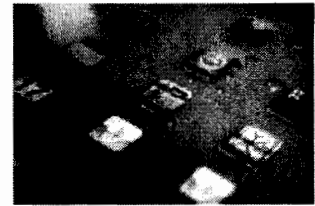
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Trial and Litigation iPad Apps for Lawyers | MyCase Blog

Wednesday, November 14 2012, 11:50 AM

Every day it seems that the list of apps developed specifically for lawyers is growing exponentially. And there's a good reason for this: lawyer's use of iPads and iPhones in their law practice is increasing exponentially every year. In fact, according to the American Bar Association's 2012 Technology Survey Report, 49% of lawyers who use smartphones prefer the iPhone and 91% who use tablets prefer the iPad. So, not surprisingly, as lawyers increasingly use Apple mobile devices, the market for legal specific apps has expanded.



(Image credit: Getty Images via @daylife)

Two of the most popular and rapidly growing categories of apps for lawyers are those developed for use during trial and during the pre-trial discovery phase of litigation. And, when it comes to the trial apps, there are apps devoted to assisting with the jury selection process and there are the trial presentation apps.

Jury Selection iPad Apps

First, let's consider the jury selection apps.

The least expensive of the jury selection apps is the JuryTracker app (\$4.99). This app provides an easy way to keep track of observations regarding jurors and allows you to organize your notes and predictions regarding each juror.

The iJury app (\$14.99) facilitates analysis of juror responses by allowing you to score responses as either negative or positive. You can also generate metrics about your prospective jury.

Another jury selection app is the iJuror app (\$19.99), which allows you to add jurors to a configurable seating chart and you can then add information and notes about the jurors.

Another voir dire app is the JuryStar iPad app (\$29.99). This app was developed by an attorney

and has a number of built-in features designed to make it easy to assess your jury panel at a glance, including color codes for the gender of jurors, the ability to add a custom color code for another category of your choosing, and the creation of custom fields.

JuryDuty (\$39.99), another app designed to assist with voir dire, allows you to enter unlimited notes about each juror.

Trial Presentation Apps

Now let's move on to the trial apps.

First, there's the newly released TrialDirector app (free), which makes it easy to create case folders and you can then add exhibits via your Dropbox or iTunes accounts, which you can then annotate.

Exhibit A (\$9.99) is another trial presentation app through which you can import your documents, photos, etc., via Dropbox, iTunes, WiFi, FTP or email. After import you can organize your files into "projects," highlight and mark your exhibits, and then share them with the jury using your iPad.

And last but not least, the TrialPad app (\$89.99), through which you can import files using Dropbox, WebDAV, email, iTunes, Photos app, or other iPad apps. You can then highlight, annotate, redact and zoom in on your documents and compare documents side by side.

Pre-trial iPad Apps

Now let's review some of the pre-trial apps available to lawyers.

First, there's the DocketLaw app, a free iPhone and iPad calendaring tool. With this app you can easily calculate court deadlines based on the Federal Rules of Civil Procedure. You can create events based on a trigger, a review of actual rule text, and via calculation logic, and once you calculate the date you can email the results, add events to your calendar, and assign a matter description.

Mobile Transcript is another trial app which facilitates the review and annotation of deposition or court transcript files. This app is free at its most basic level, and you can upgrade to more advanced versions for \$29 or \$39 depending on which features you need.

Next is the iPleading app (\$4.99), a mobile litigation template generator. Using this app you can create litigation documents on the fly by entering your name, bar number, address, phone and fax. Then, you select an email address where you would like to send the completed templates. Next, you'll receive an email with a custom template attached to it which includes a fillable PDF template for the first page of the pleading, and a second page formatted as a proper pleading, which you then use this to draft the rest of the pleading.

The Deponent app (\$9.99) is a trial app designed to help lawyers prepare for depositions by providing an interface which facilitates the creation of question and exhibit outlines. It offers over 150 categories of deposition questions, which you can customize by creating categories of your own choosing.

Finally, there's TranscriptPad (\$49.99) which assists lawyers in reviewing and organizing transcripts by creating color-coded designations, searching for specific phrases, flagging important sections, and generating reports. You can then share the reports or flagged portions of the transcript via email.

So there you have it—a comprehensive list of litigation apps, many designed by lawyers, with the work flow and needs of trial attorneys in mind. I hope you find this post useful and if there are any apps that I might have missed, please let me know in the comments.

—Niki Black

iPad lit apps

Sunday, October 28 2012, 12:36 PM

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There's an App for That? Using Technology to Prepare and Defend Your Case

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Attorneys spend their days accumulating paper in client meetings and court appearances. With the iPad and iPhone, attorneys can leave behind pads of paper and carry a device smaller than the size of a day planner to take notes, mark-up documents, and make presentations. These devices are more than just Angry Birds and Kindle books—they are business devices that help you stay organized and better serve clients. Attorneys carry iPads to gather notes, stay organized, and research case law while in meetings with witnesses or to assist with conducting trials. With everything synced via the cloud to a desktop, it is easy to work on cases from court or at the office.

Doing Lawyer Things on Your iPhone and iPad – Productivity and Calendaring

Lawyers live by their calendars. While the calendar app built into the iPhone and iPad is decent, developers have come up with some great alternatives—*Agenda Calendar* and *Calvetica*. Both of these universal apps offer navigation and event input advantages (fewer taps) over the default Calendar app.

Timekeeping

Capturing time is an Achilles' heel for every successful private practitioner. Especially when traveling, or just during a busy day, it can be very difficult to track and memorialize all of the work completed. For most attorneys, the iPhone or iPad is with you all of the time, so it seems natural to use it as a vehicle to keep track of your time. There are many products out there, but it would be best if you are with a firm to reach out to your IT department and see if your time keeper software manufacturer has a mobile app available. This way, your time could be entered directly into your time keeper without any further work. If this is not available, there are many other options, like *iBillable*, to keep track of time remotely and make it easy to transfer captured time to your Legal Assistant or back to the office to input into your firm's billing software.

Dictation

Many attorneys find it difficult to find the time to type out a lengthy e-mail, letter, deposition

report or even motion. *Dragon Naturally-Speaking* dictation is an easy-to-use voice recognition app that allows you to easily speak and instantly see your text or e-mail message. The dictation is very accurate and can be transferred and sent in an e-mail, or put directly into a document.

Case Management & Discovery – Word Processing

Compatibility with Microsoft Word is still king. From past tests (general formatting, pleading formatting, business agreement formatting), only two contenders in this area are worthy of consideration—*Documents to Go* and *Quick Office*. A key differentiator of the Documents to Go app is its support for footnotes. It also has some decent bullet and numbered list options in the app. The main gripe is that the interface is unattractive and file management is a bit difficult. Where Documents to Go wanes, QuickOffice shines with an easy to use file manager.

Document Management

As much as the iPad is an innovative device, one of its biggest drawbacks is that it cannot store files in a way that is recognizable from a PC or Mac. There are no document folders on the iPad, so there is no way for you to store or organize your documents, spreadsheets, presentations, images, videos or other types of files. Instead, you must access those files through the individual apps on the device. Further, there is no USB port, but a more elegant way to physically transfer files is used on the iPad/iPhone—iCloud, Dropbox, skydrive, etc., give access to files anywhere anytime—wirelessly.

Transferring files between an iPad or iPhone and computer is easy using *File Sharing in iTunes*. Because the iPad syncs with iTunes, you must use iTunes to transfer files between the device and your computer. This allows you to transfer a document to or from the iPad. However, the down side is that not all apps allow File Sharing and when it is allowed there are complexities when you want to sync documents on two different computers.

Another—and even easier—way to transfer and access files on your iPad is through the "cloud." Easily put, the cloud refers to apps and services that store data on other computers (otherwise known as "the cloud."). There are many iPad apps that allow access to files on the Internet. First, *Dropbox*, allows you to wirelessly transfer documents and other files directly to your iPad. Dropbox is easy-to-use service that allows you to sync your files online and across all of your computers. To get started you will first need to download it on your personal computer. Once it's installed, Dropbox creates a new folder on your computer—just drag files and folders into the My Dropbox folder and they are automatically synced to your online account. Your files are also automatically updated whenever you make changes to them. If you want to edit any of the documents in your Dropbox, you can use the Documents to Go app (discussed above) to open the document and make changes.

A very important use of the iPad for attorneys is dealing with documents we work with everyday—pleadings, discovery, correspondence, reports, contracts, case law and others. More often than not, these documents are in PDF format, but you will also want an app with the ability to view other documents types as well. *GoodReader* is one of the most popular iPad apps. It can handle just about any type of file—Office and iWork documents, PDFs, text files, HTML pages, photos, music and videos. It imports documents using a number of

different options, including a temporary Wi-Fi connection, via specific web URL, or by pulling files from mail/FTP servers, Google Docs, Dropbox and many others. Once GoodReader is loaded with the documents you want to read, you will be able to flag important documents, move documents in folders, email documents and much more. For example, if you are reading a PDF file, you can change the orientation, crop, bookmark, highlight, underline, cross-out, insert text, or even convert it to a text file. You can also print documents from your iPhone or iPad with this app using an AirPrint-compatible printer.

Legal Research

There are virtually hundreds of iPad and iPhone apps designed to provide access to particular state statutes, codes and rules of procedure. If you are interested in having any specific state's law or regulations at your fingertips, a simple search of iTunes store will provide many options. For example, on my iPad, I have downloaded the New York Civil Practice Laws & Rules (CPLR) and New Jersey Rules of Court for quick access when on the road. However, there are two apps worth highlighting that are undeniably helpful to any lawyer, no matter where you are geographically located.

The first is *Fastcase*, the iPad companion to the online service. The iPad app is free to use which means that you won't be getting as many features as you might if you signed up for a paid subscription. That said, the research features are still quite nice. To start, select New Search and enter your search terms. Federal cases (Circuit, District and Bankruptcy) are available, as well as case law from all 50 states. You can filter your search by Jurisdiction and Date Range, and you can choose to have your result check Authorities for cases citing and cited by a particular case. You can go through your results and save them to a Saved Document area. If you upgrade to "premium" edition of Fastcase, you get a number of useful features, including customer support, dual-column printing of documents, more powerful sorting tools, the ability to email a case or search results, and access to more libraries among some other features.

Additionally, most litigators at some point or another must work with PACER (short for Public Access to Court Electronic Records), as part of their practice. *FedCtRecords* is an iPhone app centered around searching PACER. The app also allows the user to save a case to a virtual briefcase for later use. Once you pay to download and view a document on PACER app, you can email it anywhere.

Depositions

Litigators read a lot of depositions and the iPad provides a nice ability to review them remotely. In the past, one could typically create a searchable PDF version of the deposition transcript and then read the transcripts in the GoodReader app, using the standard PDF highlight feature to mark significant text. However, *TranscriptPad* is a brand new app for the iPad, and is very helpful for attorneys reviewing transcripts on the go without having to carry around thousands of pages of documents. The app is fast and powerful, with a strong emphasis on mobility. You can import transcripts and exhibits in .txt and .PDF form via iTunes, e-mail, or Dropbox. The key feature of this app is the ability to designate text that is significant. To do so, simply tap the line number at the beginning of the passage and tap the line number at the end of the passage. You can then associate an issue code (created by

you) with that passage, perhaps something general like "damages" or perhaps some specific issue in your case. You can associate each issue code with any of six colors. Once you are finished designating a deposition, it is easy to export a report of what has been designated.

The iPad in the Courtroom

Another way lawyers can use the iPad in their practice is at trial. A full exploration of all apps available for trial is beyond the scope of this article, however a brief overview follows. When it comes to lawyers in the courtroom, iPad app developers are so far concentrating on two areas: juries and presentation of evidence.

Voir Dire

Apps pertaining to juries are an example of a terrific use for a tablet computer. When many lawyers pick a jury, they often do so with a legal pad and sticky notes, diagramming the panel to keep track of who is who and who said what. This is where *iJuror* comes in handy. While it appears to be geared primarily to juries in criminal trials, it can still be used to select a jury in other cases as well. The graphical layout of *iJuror* allows you to enter information for each juror, including name, employer, hometown and more demographical data like age, sex, race, marital status, children, education, prior arrests, and any prior jury experience. Once you've entered the information, you can then just drag and drop the panelists to choose jurors or alternates or dismiss them, and indicate the reason for their dismissal. The primary benefit of *iJuror* is that it gives you a clean layout of your jury panel. The downside is that it does not allow you to create your own variables of the information that may be of greater value to you for the case in question, nor will you be able to "score" jurors on any scale that is a true benefit of your typical computer-based voir dire program.

Jury Duty is another jury selection app that you may need to complete before you come into the courtroom, because a lot of data entry is required. You can enter information on each jury panelist, with selected information and a number of optional fields. You can also create a list of topics you want to cover with each juror, and can track these topics as "discussed" or "not discussed" on the individual panelist page. Once all juror information is entered, you can put together the Seating Chart, and drag and drop assigned jurors to any seat. You can then indicate whether the panelist was accepted, rejected, struck for cause or gave a positive or negative impression. There is also a handy notes field to record any thoughts you might have on the panelist.

In contrast, *Jury Tracker* is really designed to deal with your jury *after* they have been selected. It captures the reactions of jurors through-out the trial. Once you have entered information on all of the jurors, each will have their own screen for you (or a paralegal) to record their reactions throughout the trial. You can record facial reactions (nodding, shaking head, crying, smiling) as well as body motions (looking at watch, bored, taking notes). You can also file these reactions, and designate jurors as "leaders" or "followers," plaintiff or defendant-oriented, or as a "key" juror. Once this data is entered into the app, you can then run reports for each juror or the panel as a whole. Reports can be filtered to show general reactions over the course of the day or for a particular witness, to see who is leaning for the plaintiff or defendant, or those with positive vs. negative body language. These reports can be saved and emailed to others on the trial team, if desired. A major drawback of *Jury*

Tracker is that information can only be entered for one juror at a time; if multiple jurors react to testimony at the same time, it will be cumbersome to move back and forth between juror screens to record their reactions. You'll also need someone to enter the data for you, most likely a paralegal or assistant who is there solely to observe the jury and enter the information—it would be a full-time job, but likely cost the client less than hiring a jury consultant.

As these trial apps mature, it will be interesting to see if they integrate with others, as with the document management apps. It would be nice to pick your jury using iJuror, then take all the information on the final jury panel and send it automatically to Jury Tracker. Instead, you are currently stuck with reentering all of that information if you plan to use both apps at trial.

Evidence

Once the trial is started, you will need technology to present your evidence to a jury. Currently, on both TrialDirector and Sanction are the industry-standard PC-based applications that are in use for Trial Presentation. However, there are two iPad apps that are alternatives to TrialDirector and Sanction, although both have distinct limitations and neither of the iPad apps mentioned have the powerful features of the two PC-based programs. However the apps *do* have uses in the courtroom, under the right circumstances and at the right trials, hearings or even depositions.

The first app is *TrialPad*. Setting up a case in TrialPad is easy—simply select the "+" sign on the home screen, and a new folder will pop up that you can name and give a description. Then it's time to add your documents. As this is being written, TrialPad only supports PDF files, so you will need to make sure everything is converted to PDF before you use this app. You can only add the files in two ways—using File Sharing in iTunes, or by email. TrialPad promises to add Dropbox integration in future release, which would definitely improve ability to add documents. You can organize the documents by file or by folder on the left side of the screen; just press the "+" sign at the bottom to add a folder. Once you have your documents loaded into TrialPad, you can start organizing them, moving them into different folders by issue, witness or other criteria. You can also mark a document as "Hot" by pressing the flaming button in the upper-right corner. Then you can easily access all Hot Docs in a particular case by pressing the Hot Docs button in the File Manager. TrialPad offers three basic annotation tools—highlight, red pen and redact. You can use any of these options to mark up your exhibits either ahead of time, or during presentation at trial or hearing. When you are ready to present a document, make sure you've attached a VGA cable to your iPad, attach the cable to a projector.

The other trial presentation app, *Evidence*, supports more file types than TrialPad, including JPG, PNG and TIFF images, as well as Powerpoint and Text files. However, multipage TIFFs, which are routinely used in the more robust trial presentation programs, are not supported here; you cannot move past the first page of the TIFF. At this time of this article, documents could only be added to Evidence through File Sharing in iTunes. Documents are handled differently by Evidence—there are no folders, so you cannot organize the documents for a particular case, and there is no way to reorder the exhibits in the database. For annotating documents, Evidence has a highlight and underlining/circling tool, but no redaction feature. A significant drawback of Evidence is the inability to display a full page of

a document—it will only display partial pages. Many times you need to show a judge or jury a full document, even though they may not be able to read all of the text on it without zooming.

Neither TrialPad nor Evidence comes remotely close to the power of a Sanction or Trial Director, but if you only need to present a few files in a small case or to a judge at a hearing, you probably don't need all the bells and whistles. These apps, limitations notwithstanding, should work just fine in small matters.

Outside the Office

Lawyers need apps to help with practice beyond just strictly legal or courtroom related. Here are some of the most practical and popular apps for lawyers to assist with day-to-day practice.

Triplt. Triplt "automatically" takes all your trip details and creates one helpful itinerary that is there when and where you need it – on your on your smartphone or tablet, sync'd with your calendar, and online at tripit.com. When you receive a confirmation email from anywhere you book, simply forward it to Triplt. Triplt instantly recognizes reservations from 3,000+ booking sites including cruises, restaurants, concerts and more.

Around Me. AroundMe quickly identifies your position and allows you to choose the nearest Bank, Bar, Gas Station, Hospital, Hotel, Movie Theatre, Restaurant, Supermarket, Theatre and Taxi. AroundMe shows you a complete list of all the businesses in the category you have tapped on along with the distance from where you are.

CardLasso. CardLasso allows users to take photos of business cards with their iPhone camera, send them to Lasso2GO with one touch, and receive the contact information via vcard, csv file, or directly in Salesforce CRM.

Conclusion

The challenge of writing about technology is that it is always changing—at this time of this writing, the newest version of the iPad, or "new iPad" or "iPad 3" as it has been called, had just been released by Apple. The new iPad is comes with some great new features that would be beneficial for lawyers, including a voice dictation key, high resolution screen, and a faster processor. The good news is that the improvements in the new iPad do not affect the basic functionality of the device, so that what you have learned on a first or second-generation device should still apply. It is important to note that while the iPad's hardware gets updated roughly once a year, the apps that run on the device are being updated constantly by their developers, and features come and go with sometimes dizzying frequency. The best way to stay ahead of the curve is to consult tech websites and blogs geared for lawyers, like Tablet Legal (<http://tabletlegal.com>), The Offsite LawTech Center (<http://offsitelawcenter.com/>) or Walking Office (<http://walkingoffice.com>).

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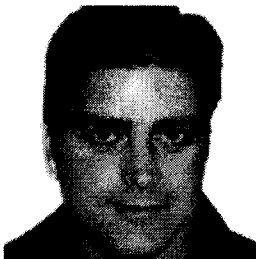


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The catchphrase for the mobile lawyer? "There's an app for that." That may be true, but finding it and making it work for you or your law firm is a journey where law firms should let technology drive the business model.

During the opening keynote to the International Legal Technology Association Conference in August, Frans Johansson, founder and CEO at The Medici Group, said "Legal teams have an opportunity to collaborate with the other business functions to really set the organization up to be innovative — to set it up for success." He added that "Law firms should look to use technology to drive — not just serve — the desired business models." he added.

Johansson's message rang out loud and clear in a number of sessions at the ILTA annual conference and in conversations that I had with attendees as well as clients following the meeting. In this article, I've captured the most presented and discussed applications used by law firms and lawyers — specifically looking at them from the perspective of lawyer mobility.

CITRIX MODEL

One option to provide application capabilities to lawyers on their mobile devices is through the use of Citrix. The common Citrix model to deliver an app and data from the law firm to the remote device is a relatively easy way to get around a lot of the "bring your own device" (BYOD) challenges, such as security and performance. However, in a few of ILTA's educational sessions where Citrix was discussed, attendees expressed serious concern for offline Citrix sessions — stating that this is one of their top call center issues.

Attendees also shared that there are still security concerns with relying solely on Citrix as a means to deliver on their mobile requirements as the devices themselves could be compromised, which may compromise the firm's remote computing environment (i.e., the remote access and potentially the back-office systems). These security concerns warrant further investigation, but that's another story.

Assuming that firms may not want to rely solely on remote access technology to deliver mobile applications, and that users may not accept non-native apps to do their work on their mobile devices, we will certainly see an increase in the amount of legal workflows onto the personal devices of legal professionals.

With this in mind, here are some of the most commonly used apps that were discussed at ILTA and that I have come across in practice:

- Trials: TrialPad, ExhibitView, Jury Duty, JuryTracker and iJuror.
- Communications: Skype, Viber, Google Voice and Microsoft Lync.
- Note-taking: OneNote, Paper, Penultimate, Evernote, DrawPad, 7Notes, SlideWriter and Bamboo.
- Document creation and editing: Documents2Go and OfficeHD; and iBooks to create training material.
- PDF editing and annotating: iAnnotate PDF and GoodReader.
- Document storage: Google Drive, SkyDrive and Dropbox.
- Document, book, case reading: Apple Reader, Kindle and Nook.
- News and RSS Feeds: Google+ and Flipboard.
- Presentation Delivery: Keynote (w/Presenter) and Apple Airplay/AirDisplay.
- Meetings: GoToMeeting.

- Device access control: 1Password and RSA SecurID.
- Device and app control: Good Technology, Mimecast and AirWatch.
- Remote access: Splashtop, PocketCloud, LogMeIn and Citrix.
- Business cards: CardMunch and CamCard.

In addition to the app collection above, here are some of the peripheral use cases captured during the ILTA event as primarily described by service provider Cornerstone Information Technologies LLC:

- using tablets to set up new offices;
- using VoIP technologies, such as Microsoft Lync, to automatically route and bill calls to a client;
- viewing news feeds for clients prior to entering a meeting; and
- managing and maintaining relationships with contacts and clients.

THE NEXT BIG WAVE: CUSTOM APPS

Brownie Davis and Ike Ellis of Fish & Richardson, informed ILTA attendees that one-third of their lawyers already use mobile devices to do their day-to-day work. Eighty percent of the law firm's mobile lawyers are using iPads. To address the mobility needs of the firm, they have already developed five custom applications with more in the pipeline. The apps include:

- matter management: emulates a Reddit reader with drill-down capabilities;
- marketing: enables post-grant proceedings and kiosk capabilities for trade shows;
- time entry: integrates with their back-office billing system;
- business of law: analyzes and reports on marketing and firmwide business intelligence; and
- budgeting: provides entry, analysis and reporting of department and firmwide budgets.

If a firm is going to build its own app, Davis and Ellis suggest the following be considered as core mobile app requirements:

- data encryption (at rest, in use and in transit);
- data expiration (wipe after a few days if, for example, the user does not log);
- user authentication, app validation and identification of the device to access back-office systems;
- ability to remotely wipe selective data (based on app and storage container); and
- a mobile device partner that supports containers.

Advice from one of the attendees to firms considering developing mobile apps: "If you are going to provide an app that requires heavy data entry, be prepared to provide tools that allow users to easily enter the data using add-on software and/or extended hardware. The best example would be an attachable keyboard."

While there is certainly an app for most things, I suspect we will begin to see much more custom development of applications geared toward creating new mobile workflows for existing custom back-end systems or to simply extend current application workflows, bridging the gap between what's available and what's needed. Certainly, the need for enterprise-ready and secure application development and distribution platforms will be paramount. We're already seeing activity in this space, including Good's recent acquisition of AppCentral, an app software distributor.

Many large firms have the development talent in house to make their own apps. If your firm does not, consider outsourcing the work to mobile app development specialists like RareWire, noted for dynamic content; Kony, which has strong platform features; Good, which builds secure containers for BYOD; and moTwin, which builds context-aware apps. Note that there are a ton of app developers out there. And each have their own unique piece of the app market, or expertise.

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The iPad for Litigators: Storming the Courtrooms | Litigation News | ABA Section of Litigation

Monday, December 31 2012, 12:16 PM

Tips from the Trenches »

The iPad for Litigators: Storming the Courtrooms

By Sharon D. Nelson and John W. Simek

Only rarely do you see a new technology storm the courtroom, but the eagerness with which litigators are embracing the iPad is extraordinary. As we write this, we have just returned from giving a continuing legal education (CLE) program at which a litigator proudly held up his new iPad and pronounced: "This is a game changer." If you are not yet a believer, consider this: When we helped organize a webinar sponsored by the America Law Institute and the American Bar Association and called (cleverly) "The iPad for Litigators," so many lawyers registered (nearly 1,000) that we had to break it into three sessions so as not to overload the technology. The CLE made so much money that its sponsor, the ABA's Law Practice Management Section, quadrupled its anticipated yearly income. When we taught a similar CLE in Fairfax Circuit Court, we maxed out the space in our largest courtroom. We now have four more such CLEs scheduled.

The iPad's popularity results from its sleek design and impressive functionality. Before trial, you can use it to initiate and complete research, organize exhibits, compose deposition questions, manage deposition transcripts, prepare jury voir dire questions, and so much more. In court, you can communicate with other colleagues without having to say a word, record juror reactions, or do research on the fly, assuming the court will allow you to connect to the Internet during trial. The iPad is so slender that you can also, while walking about the courtroom and talking to the jury, link with courtroom presentation technology to show exhibits, do call-outs, and make annotations. The jury is able to focus on your message rather than being overwhelmed by bulky, cumbersome technology. And you are able to let your inner Abraham Lincoln shine as you perform your magic as a litigator.

By now you may be thinking, "If I have the iPad 2 , do I need to upgrade to the new iPad to take

advantage of these functions?” Nope. However, if you have the original iPad, you need to upgrade to allow applications, or apps, to clone the screen so that you can shoot it to other devices for display. If you are purchasing an iPad for the first time or upgrading, make sure you get enough storage space on the device—you may be showing videos or deposition testimony in court and will quickly max out the 16-gigabyte version. We recommend getting the 64-gigabyte model.

So what about accessories? First, you certainly need a cover, and there are scads of them—check out the reviews at [iLounge](#). If you get a cover that can function as a stand, you won’t need to purchase a separate stand. Second, if you’re planning to use the iPad to make handwritten notes, you’ll need a stylus of some sort. Blogger Jeff Richardson is fond of the Virtuoso (\$19.95) or BoxWave Styra (now \$22.95 at Amazon.com). Adonit Jot Pro (\$29.99) is the favorite of Tom Mighell, author of two best-selling and must-read books, *The iPad in One Hour for Lawyers* and *iPad Apps in One Hour for Lawyers*.

If, on the other hand, you’re a fast typist, as author Nelson is, you might prefer the standard issue Apple wireless keyboard that uses Bluetooth technology. The keyboard and iPad, with cover, fit without problem in her purse so she doesn’t need to lug around a laptop, although in truth she prefers the laptop for really serious work. Finally, you need to get Apple’s video graphics array (VGA) adapter (\$29.95) to connect your iPad to a projector in the courtroom, and possibly a high-definition multimedia interface (HDMI) adapter (\$29.95) to connect your iPad to a high-definition television.

The Downsides

Now for some of the not-so-great iPad attributes. No one likes to hear about security issues, but there are some with which you need to be familiar. Here are our basic concerns and some of the remedial steps you can take: First, make sure that you enable a lock code. Avoid the temptation to use a four-digit personal identification number (PIN); instead, configure a passphrase for locking the iPad. Configuring a lock code automatically enables encryption on the iPad. It’s fairly weak encryption, but it is better than none at all. Next, configure the iPad to automatically wipe itself if there are 10 incorrect attempts to enter the unlock code. Even if you are slightly sauced, you ought to be able to get it right in 10 tries. Or stop at eight and try again in the morning! You will also want to configure the “Find My iPad” feature so that you can locate it if it is ever lost. This also enables you to wipe the contents of the iPad remotely.

We have long been critical of the iPad as a productivity device. Although it is a wonderful tool for consuming content, producing content has been more problematic. It is slowly getting better, but so many solutions are kludge fixes. For example, printing can be a headache. You can print directly from an iPad using a feature called AirPrint, but it only works with some newer printers. Many lawyers resist the expense and trouble of getting rid of a current printer in favor of a new AirPrint-compatible printer. Most users will print indirectly using a computer with AirPrint software support, which routes

the print request from the iPad to the computer and then to a printer via an attached USB printer. The computer has to be on to enable printing, but this seems to be the preferred option.

Another missing feature is the lack of a native folder structure as you are probably used to seeing on a Mac or Windows computer. Folder structures exist only within apps. There's no easy way to get files on and off an iPad, so folks use email to transfer documents or sync their iPad to cloud-based accounts like Dropbox. It can all be done, but it isn't elegant.

Apps for Lawyers

Despite some room for improvement, the iPad currently reigns as the premier litigation tool. So what are the lawyer's need-to-have productivity apps? Penultimate is a favorite for taking handwritten notes with a stylus. Or, if you prefer using a wireless keyboard like author Nelson, go with Evernote. But, if you are working on Microsoft Office files, Documents To Go is our favorite choice. This is the only app that allows you to see the Track Changes and Comments features of Word, and you can also work on Excel or PowerPoint files. All three apps sync easily with Dropbox. GoodReader, which makes reading and annotating documents a breeze and supports a wide range of file types, is another useful app for the busy litigator, because it allows organizing files into folders within its own structure.

We, of course, like the iPad most of all in the courtroom, where lawyers are taking to it en masse. There is no way in a column to list all the possible apps—your best source is Mighell's book of apps mentioned above—but, here is a concise list of the apps our litigating colleagues seem to favor.

Court Days Pro (\$2.99). This app allows you to set up a case calendar with deadlines.

Idocument REVIEW (Free). This app allows you to review the documents in your case and mark them as relevant, privileged, or a "Hot Document." The volume of documents that you can work with is limited, however, and you have to first send the data to the vendor to convert it to a proprietary file type. We're not crazy about the idea of sending your potential evidence to someone else, but it is what it is.

The Deponent (\$9.99). This app was designed by our friend and e-discovery expert (and attorney) Josh Gilliland. It allows you to prepare deposition questions in various practice areas. Some questions are suggested, but you can customize the questions to your liking.

TranscriptPad (\$49.99). With this app, you can work with all of your deposition transcripts, search through the whole case, color-code certain case issues, and send out summary reports. Currently, the app reads only text files of the transcripts.

iJuror (\$9.99). This is a juror selection app, which many colleagues regard favorably. It allows you to enter information about each potential juror and then to seat them in a virtual juror box once the selection and strike process is over.

TrialPad (\$89.99). This is the big kahuna—hence the heftier price—but this is the app our litigating friends seem most excited about. You can load documents, photos, and videos from your Dropbox account into this app for use at hearings and at trial. It is a lot cheaper than Trial Director and its comrades, but it does many of the same things from the very slender and unobtrusive iPad. Once a document or an image is displayed, you can annotate it, perform call-outs, or redact portions of the file. This is one app that is regarded as a must-have for litigators.

ExhibitView (\$69.99). This is a relative newcomer but worth mentioning. It does basically what TrialPad does, but it also has a desktop companion tool, so it has the advantage of allowing you to transfer your case file between your office computer and the iPad. It also has something called Witness Mode, which lets you give your iPad to a witness so that he or she can view and annotate an exhibit but without seeing any other documents in the case file. We haven't heard too much about this one from our litigating friends yet—TrialPad made it to the beachhead first.

BT Chat HD (Free). You'll love the price, we know, and this is a nifty little app. If you're working in court with a team, it is not always desirable to whisper to one another or pass notes. With this app and a Bluetooth connection, team members can privately chat electronically.

Are there other possible apps? Yes, tons of them. This is part of the danger. You don't want to download all sorts of unvetted apps without really knowing their security features and their capabilities. So what's a busy lawyer to do? For the moment, watch Tom Mighell—he'll be updating his written materials as he continues to do webcasts, which are greatly in demand. Also, get references from colleagues. Finally, we really like the Apple app AppAdvice (\$1.99). For that paltry price, you get a pretty good review and a sense of whether the app you're considering is worth buying.

So let that inner Abe Lincoln loose in the courtroom with the elegant and inconspicuous iPad. Your advocacy will soar without being overshadowed by technology, while the technology complements

your case. If you are not yet tech-savvy, let a colleague run the equipment. But, after some practice and preparation with the tools, many lawyers are comfortable enough to manage on their own. As Lincoln himself was wont to say, "Give me six hours to chop down a tree and I will spend the first four sharpening the axe."

Keywords: ipad, app, ipad app, technology

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Comments

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Getting the Most Out of Your iPad During Litigation | Cogent Legal

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The Jury Expert

Apple's sleek tablet has found its way into countless attorneys' homes. Perhaps it began as a gift and now sits on the coffee table as an email portal or a fun way to read the newspaper. Or, maybe it has fallen into the hands of the children as a means for playing Angry Birds. While attorneys use laptops and iPhones for work-related tasks, the iPad often remains underutilized at the office. But the iPad has numerous useful applications for the courtroom that set it apart from a computer or a smartphone.

The iPad is a perfect tool for displaying case information during trial. With new apps, easy touch-screen navigation, connectivity, and portability, the iPad can act as a remote control and quick editing device for your presentation. I'll describe some apps and connectivity options for turning your iPad into a powerful litigation tool.

Transferring Files

In order to use iPad apps for displaying slides and case documents, it's essential to understand how to transfer files from your computer to the device. The iPad doesn't function like a thumb drive—you can't plug it in and drag-and-drop files. The simplest way to load files is to use an online storage site, like [Dropbox.com](https://www.dropbox.com). You can open an account and upload up to 1GB of files from your computer, then log in on the iPad and download them. Apple's [iCloud](https://www.icloud.com) is a similar online storage site that you can use to sync files to the iPad. Once you are comfortable with these methods of transferring files, you can start using presentation apps.

Slide Presentation

New apps make it possible to display and control a slide-based presentation using the iPad. Since the iPad isn't bulky and has an intuitive touchscreen, it's a perfect device for strolling around the courtroom while changing to the next slide that the jury sees projected on a screen. Whether you use PowerPoint or Keynote to assemble your presentation, there are apps that integrate the iPad with both programs.

PowerPoint is the most popular slide presentation program. Despite PowerPoint's wide use, it has some flaws to keep in mind; for example, its graphic creation is limited, and PowerPoint does not embed video well, so you often must keep track of video files in a separate folder.

If you use PowerPoint, the [SlideShark](#) app allows you to display your presentations on your iPad.

The app does not support hyperlinks on slides, embedded videos, animated GIFs, audio, or fancy slide transitions, and so it limits many of PowerPoint's features. But it does display simple slides and does a fade transition between them. To use the app, you open a free account with them online and upload your PowerPoint file to their server. It is then converted into a playable format that you can access within the iPad app.

Keynote is Apple's version of PowerPoint, and it integrates seamlessly with the iPad. It's easy to add media—just drag and drop photos and videos and format them within the program. Keynote embeds videos into the presentation and accepts any file format that QuickTime supports, including high-quality MP4 videos. Keynote has a range of drawing tools and tasteful background templates.

Once your presentation is complete, there are two iPad apps you can use to play the presentation.

Keynote Remote transforms your iPad into a simple remote control device. The presentation is stored and played through your Mac laptop, which is connected to the projector. Keynote Remote shows you the slide that is currently projected, plus the next slide in line, so that you can calibrate your images and discourse. To set up Keynote Remote, first make sure both the iPad and laptop are connected to the same Wi-Fi network. On the laptop, open your presentation in Keynote and choose "Preferences > Remote." On the iPad, start the Keynote Remote app, and you will see an option to "Link" to the laptop. Then, you are free to walk around the courtroom and wirelessly control the slideshow from the iPad's touchscreen.

If you want to eliminate the laptop completely, the **Keynote App** allows you to create a presentation on the iPad, and then project it directly. I find it a bit difficult to create a presentation from scratch using this app, so I recommend loading a Keynote file that you made on the computer, then using the Keynote App for last-minute pre-trial edits. Either of these Keynote apps can transform the way you interact with your courtroom presentation.

Exhibit Presentation

These apps allow you to store of your exhibit documents on your iPad and display them to the jury as needed. Like Keynote Remote, these apps use a "Presenter View" that lets you see on your iPad what is currently being projected and what exhibit will follow. Over the last year, exhibit presentation iPad apps have improved their functionality, and can certainly handle a small trial.

Exhibit A (\$9.99) is lowest on the price spectrum. You can load case documents of up to 3MB onto the iPad via Wi-Fi, email, FTP, or iTunes, then create folders to organize them. A preview mode allows you to see the exhibit before displaying it to the jury. I would recommend this app for a smaller trial or mediation, because it has trouble handling large files.

TrialPad (\$89.99) is a more comprehensive program. It can display a range of file types, including MP4 videos. You can import an entire case folder through Dropbox.com, which speeds up the file transfer process. TrialPad allows you to highlight text and create document call-outs, so you can visually emphasize your point.

Another option is **TrialTouch** (\$69 per month), which allows you to upload files to their online server and access them on the iPad. This replaces Dropbox and provides a secure place for case-sensitive

information. The presentation software handles the same file types as TrialPad and is easy to learn and use.

Display

The final piece of the puzzle is connecting the iPad to a courtroom projector. The simplest way is by hardwire. AV Adapters (\$39.99 from Apple) are available from Apple in various formats that you can attach to any projector. Plug the cable into the projector, attach the adapter to the other end, and connect the adapter to the iPad. Any content displayed on the iPad will show up on the projector's screen. The "presentation mode" in some of the apps I discussed can sense the external connection and will only display the current slide on the projector. The disadvantage to hardwiring is that the cable physically tethers you to the laptop, limiting your strolling ability.

Connecting wirelessly is a bit more complex. The newest version of the iPad features AirPlay, which wirelessly links the iPad to an AppleTV device (\$99.99). The palm-sized AppleTV box hooks up to the projector with an HDMI cable, and then uses a Wi-Fi network to connect to your iPad. By using an Apple Airport Express (\$99.99) or other WiFi hotspot, you can create your own Wifi network, and connect to Apple TV and project Wirelessly. You must activate Air Play on the iPad to share your screen with the projectors.

In Conclusion

I recommend giving some of these apps and connectivity tips a try. See what works for you. Practice using the presentation apps and learn their functionality. Set up the projection display by yourself before you go to mediation or trial. Turn the equipment on and off, run through your presentation several times. Get comfortable with the technology. You just might find that the shiny tablet on your coffee table is your newest courtroom asset.

URL to article:

<http://www.thejuryexpert.com/2012/09/getting-the-most-out-of-your-ipad-during-li...>

Documents To Go® - Office Suite for iPhone, iPod touch, and iPad on the iTunes App Store

Monday, December 31 2012, 1:10 PM

Description

Looking to access your Microsoft Office ® files at any time? All you need is your favorite iOS device and Documents To Go to be constantly connected!

NEW! The latest update to Documents To Go includes numerous bug fixes, feature enhancements & more!

****If you've made an in-app purchase for Google Docs support and have had issues uploading or opening files, the problem is fixed in this update!****

What can I do with "DocsToGo"?:

- VIEW/EDIT/CREATE Word & Excel files(Office 2007/2008/2010)
- VIEW PowerPoint, PDF, iWork, Text, .RTF, and more!
- Send & receive attached supported documents using the built-in Mail app
- FREE desktop application with your purchase! Compatible on Win & Mac allows you 2-way file sync with a WIFI connection.
- Open & Edit files within DocsToGo from any 3rd party app that supports the "Open In" feature
- Supports iTunes File Sharing via USB cable for manually moving files

THE DATAVIZ® ADVANTAGE

DocsToGo, now in its 13th year, is developed by DataViz, Inc., a producer of quality software for Macs & PCs for over 26 years. DocsToGo is currently preloaded on millions of devices around the world, including BlackBerry, Android & others.

Word To Go Features:

- View/Edit/Create Word (.doc, .docx) files
- Various bullet styles/formatting
- InTact Technology retains original document formatting of edited files
- High fidelity VIEWING: embedded graphics, tables, comments, footnotes/endnotes, text boxes, table of contents & hyperlink support
- Supports opening password protected Word 97-2008 files
- Extensive character formatting & paragraph alignment
- Auto bullets/numbers
- Multiple Undo/Redo
- Find & Replace
- Word Count

Sheet To Go Features:

- View/Edit /Create Excel (.xls, .xlsx) spreadsheets
- Includes support for Freeze Panes and Sort
- InTact Technology retains original document formatting of edited files
- Freeze rows/columns
- 111 functions
- Open password protected Excel 97-2008 files
- Extensive cell & number formatting
- Insert/delete/resize/hide/unhide rows & columns
- Rename/insert/delete sheets
- Multiple worksheets
- Multiple Undo/Redo
- Find/Find Next

PDF To Go VIEWING Features:

- Thumbnail, Fit to Screen, Fit to Width, Actual Size & full screen views
- Go to/rotate page
- Open password-protected PDFs

FREE Desktop Application:

- *Free desktop app for 2-way file sync using WIFI*
- Sync & transfer files/folders in one easy-to-use desktop app
- Downloadable on a Windows or Mac computer

System Requirements:

- iOS device running iOS 4.3 +
- WIFI router with multicasting capabilities
- Win XP, Vista, 7 & Bonjour
- Mac OS X 10.4.10 or above (G3 Macs not supported)
- Desktop sync requires device to be connected via WIFI to same network/IP address as computer

DataViz, Inc. Web Site Documents To Go® - Office Suite Support

What's New in Version 4.0.12

- Fixed crash on launch.
- Fixed formatting issue with Excel files from Google Drive*.
- Fixed issue where some Google Drive* files appear blank/empty.

*Support for Google Drive and other cloud services is a premium only feature that can be added to this version of Documents To Go via in-app purchase.

...More

Screenshots

iPhone iPad

Customer Reviews

Doesn't sync with iPhone 5

by rodeece

I have been using documents to go for a long time with my iPhone 4. After upgrading to the iPhone 5, I can no longer sync documents. The website has minimal support, and doesn't answer the specific error code that I received. Disappointed.

It's OK

by Tpmcman

Strange that it keeps crashing and frequently will not pair PC with iPhone or iPad? I have to un install and re install frequently. When it works it works great.

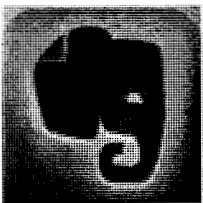
Cant Pair Device Error-No Support

by WestyBueno

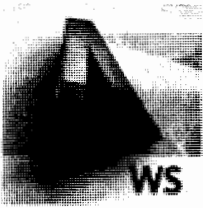
I've been trying for weeks to pair my mac with my iPhone 5 and have been unable to do so. It sees my phone but then I get a can't pair device error. I've contacted dataviz several times and they don't reply unless I threaten to leave a bad review. Well once again they failed to get back to me so I have no choice but to leave a bad review. Can I get a refund since this no longer works?

...More

Customers Also Bought



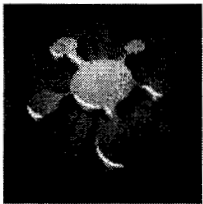
- Evernote
- Productivity
- View In iTunes



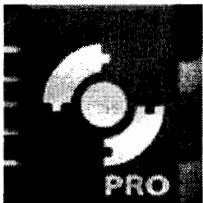
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- [iThoughtsHD \(mindmapping\)](#)
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- [View In iTunes](#)



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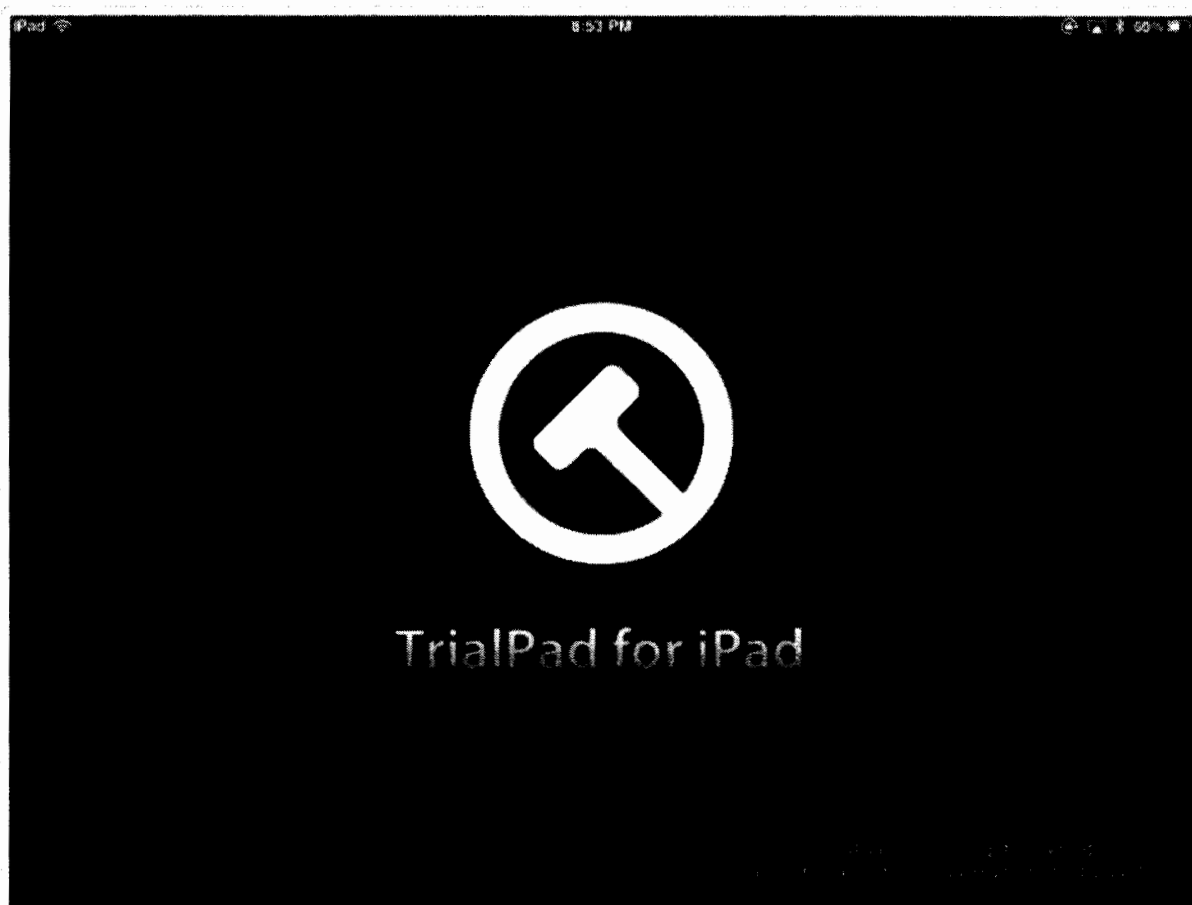
iPad Trial – notes from the courtroom Part 3 – TrialPad Review | groundworktc

Thursday, November 8 2012, 11:51 AM

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iPad Trial – notes from the courtroom Part 3 – TrialPad Review



For years, I've been using trial presentation software to publish exhibits in court. So this review of TrialPad comes from that perspective and from my experiencing using it in the court room. Overall, I enjoyed using it. At times, it seemed to run a little sluggish compared to laptop,

but it got the job done. For the target audience of attorneys who are trying to run this stuff on their own while simultaneously trying their cases, I think this product is a hit. But there are a couple of things to keep in mind.

The main reason you want to use TrialPad (or any trial presentation specific software) is that it allows you to take advantage of dual screens. This setup lets you control the exhibits on your laptop, or iPad in this case, while the jurors only see the exhibits. The whole purpose is so that the jury only sees admitted evidence and not mouse clicks or your laptop desktop or folders. (If you don't care about all that and you want to use an iPad, use PDF Expert. It's my favorite PDF reader and it has SugarSync, Google Drive, and DropBox functionality baked right in)

For those of you familiar with Trial Director or Sanction, you're probably used to converting all your pdfs to tifs and then importing in the exhibits that way. With TrialPad (and all good trial presentation software), you don't have to convert your pdfs. This is an amazing timesaver, and in my opinion, it overcomes one of the biggest hurdles in learning trial presentation software. It's counterintuitive and it makes updating/changing exhibits a hassle.

I recommend using DropBox to get your exhibits into your iPad. It seems to be the easiest way to do things. The plus side of using DropBox is that you can have your paralegal or second chair or law clerk handle the exhibits and making sure they're up to date and are

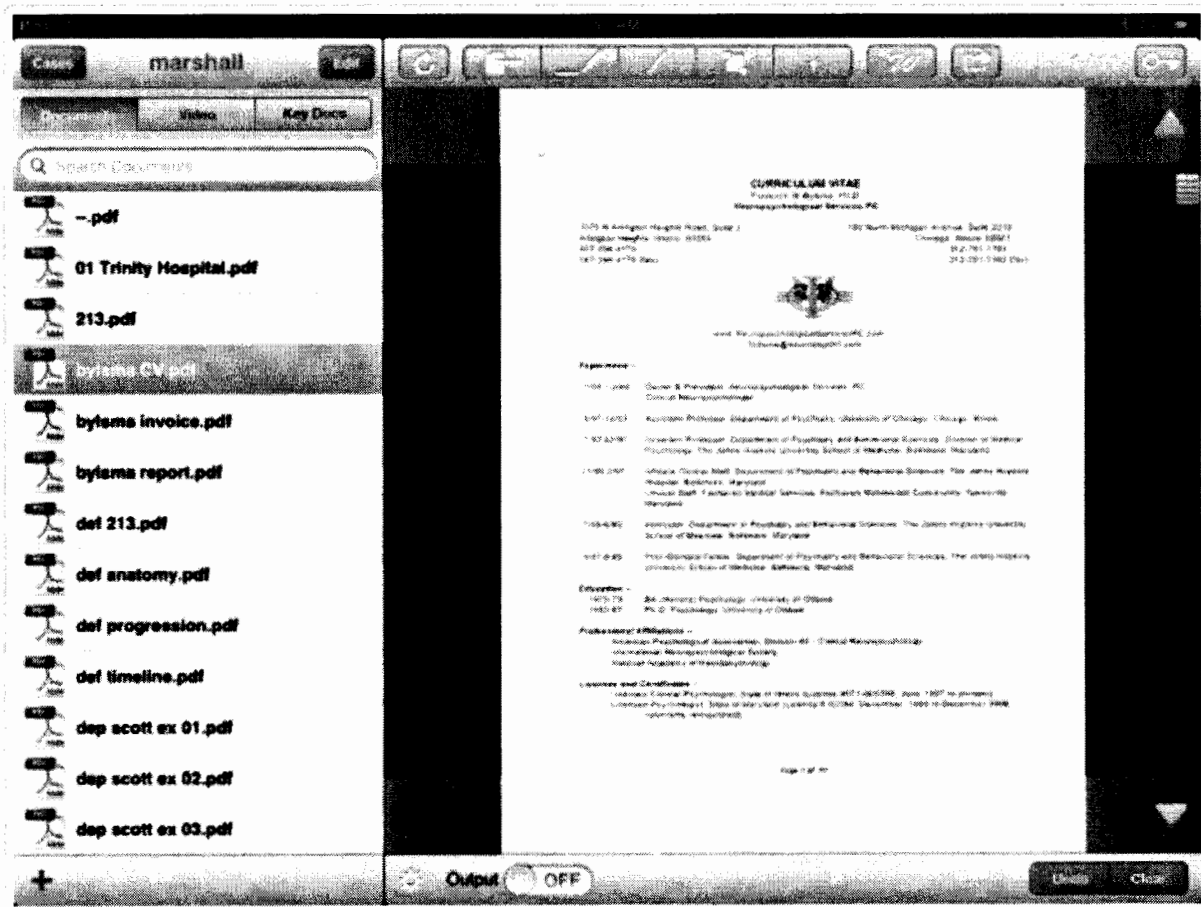
the right versions, which you're probably already doing anyway. And then, when it comes time to build your case file on the iPad or if you need to update an exhibit or change an exhibit on the iPad, you can just pull it down from the DropBox cloud to your iPad. This is particularly handy if you are trying a case outside your home turf. The exhibits can be managed at the home office while you are downloading the updates in your hotel room or anywhere that you can download data from the internet. See my post yesterday on how to set up your DropBox to work with TrialPad.



each case appears as a folder

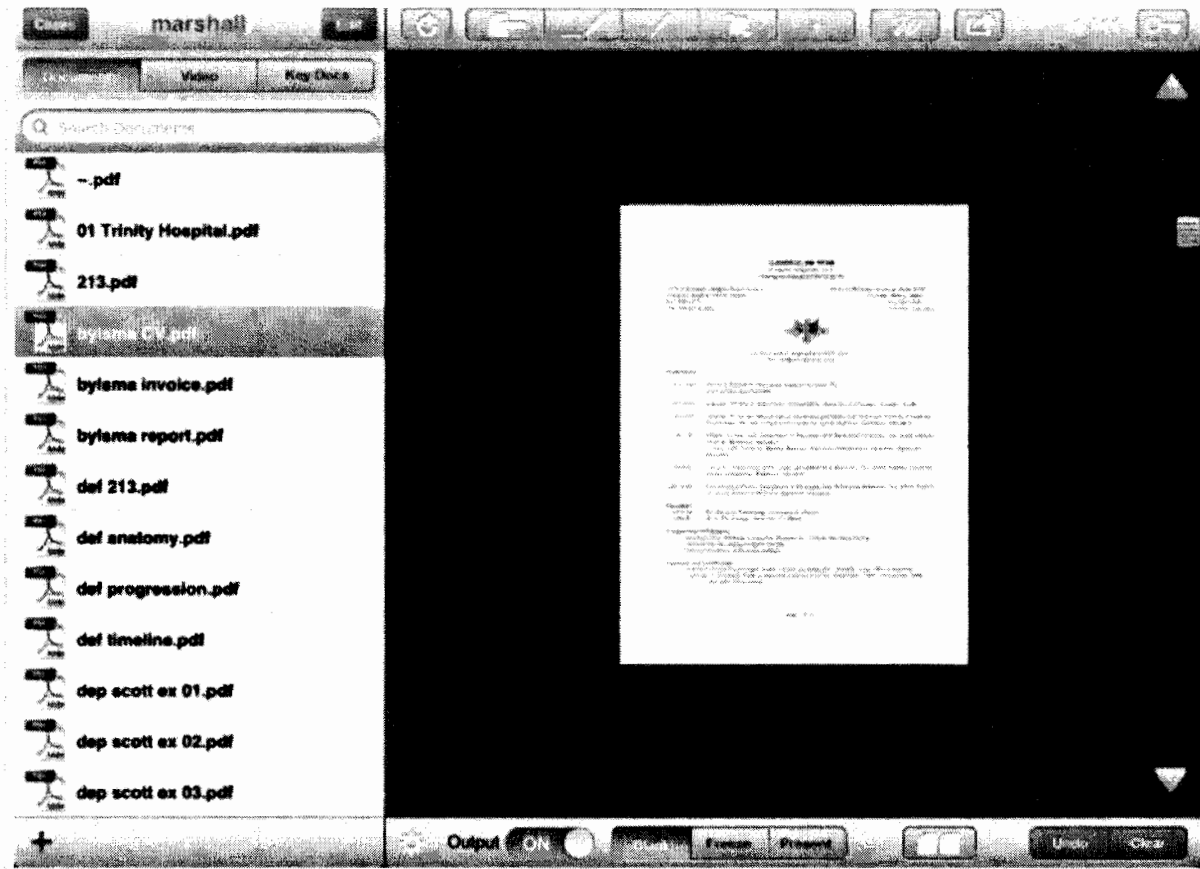
Once you do get your exhibits onto your iPad and into TrialPad, click on the folder and you should see a setup that looks very similar to how your email looks on your iPad. The exhibits will be listed on the left,

and when you click on one of the exhibits, it will appear on the right.



exhibits on left, preview pane on right

By default, you will be taken to the first page of the exhibit. there is a scroll bar on the right that you can use to go to a specific page. If you press and hold down on it, you can scroll to a specific page. As far as I know, there is no way to jump to a specific page, and that is a shame for two reasons: (1) it's common for me to have exhibits that are 100+ pages, and (2) using the scroll bar was inaccurate – if I wanted page 514 of 726, for example, even though it looked like I was scrolling to 514 using the press and hold method, it would bring me to 509 or 519. And then I would have to use the arrow keys to click up and down pages, as needed.

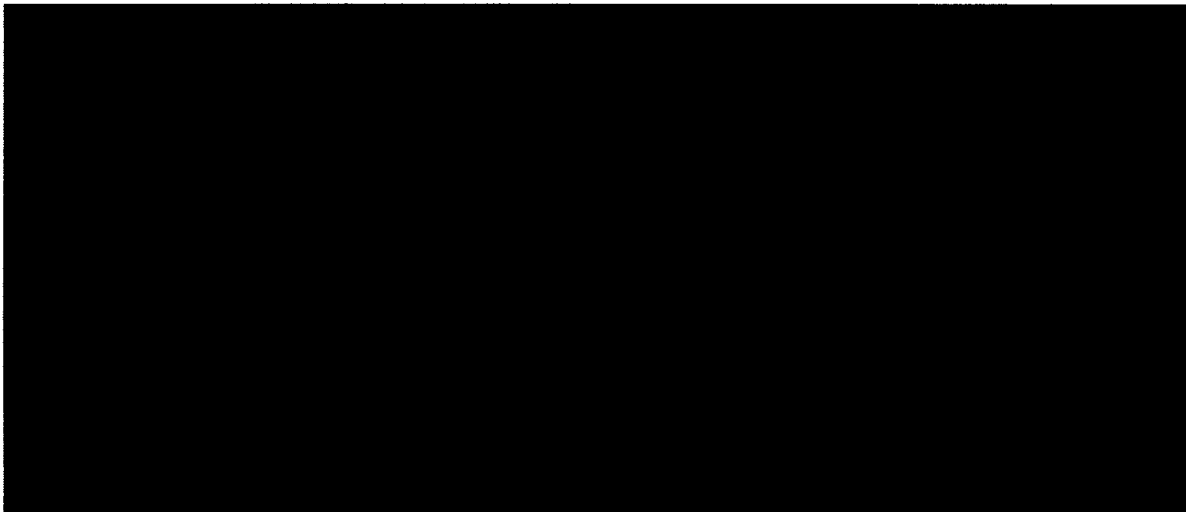


switch the Output toggle to On

When you're ready to present, hit the output button. Switch the toggle from Off to On. When you do that, you will see three options: (1) blank, (2) freeze, (3) present.

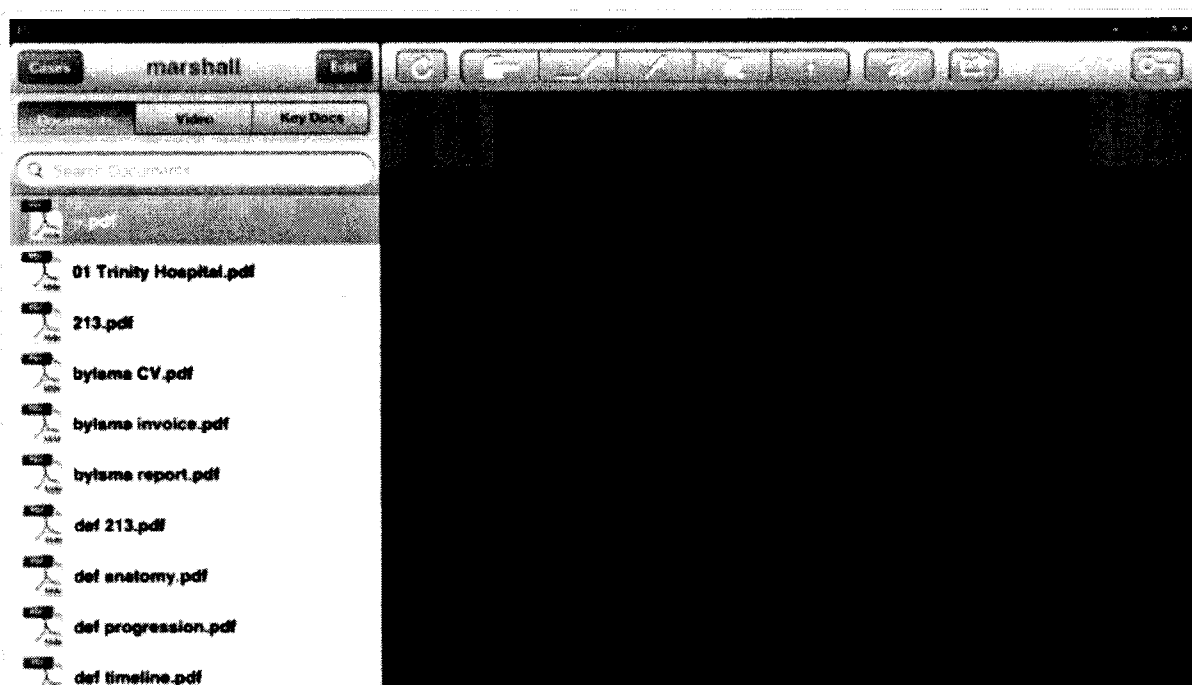
The default is blank. The blank screen setting shows nothing. This is the setting you will use when you are not yet ready to show an exhibit to the jury or when you are done showing an exhibit and you want your screen cleared.

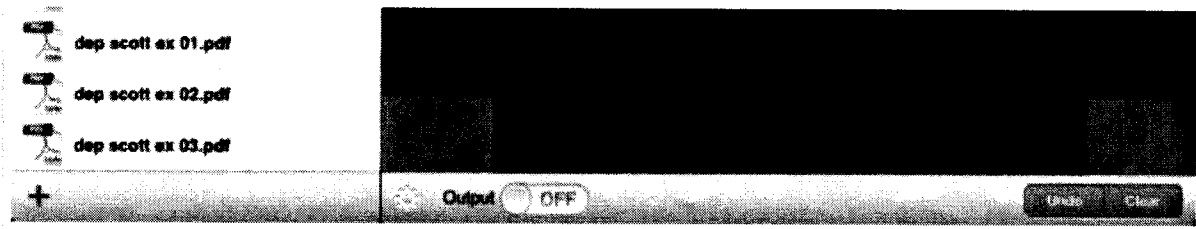




this is the so-called blank screen in TrialPad that your jurors will see (when using a VGA dongle). Unacceptable.

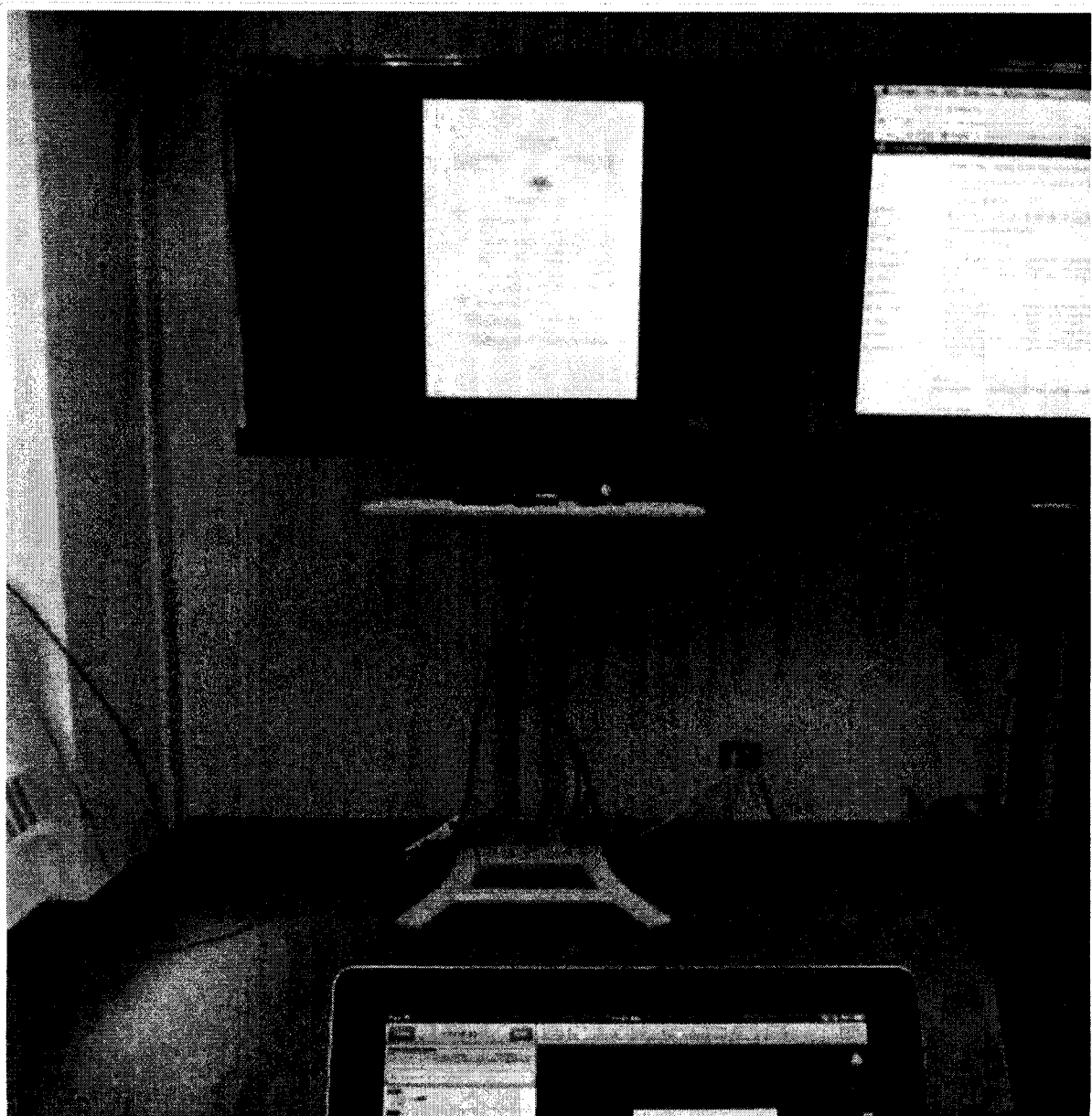
In practice, I hate the blank setting. When using the VGA dongle to connect to the projector, which is what I was doing for this trial, the blank screen wasn't blank at all. It would show a logo for TrialPad. First of all, shame on TrialPad for doing this. I've already paid \$99 for this app. Second of all, one of the last things I want my jurors to see is a logo for a product that will likely invite them to do some googling when they leave the courtroom.

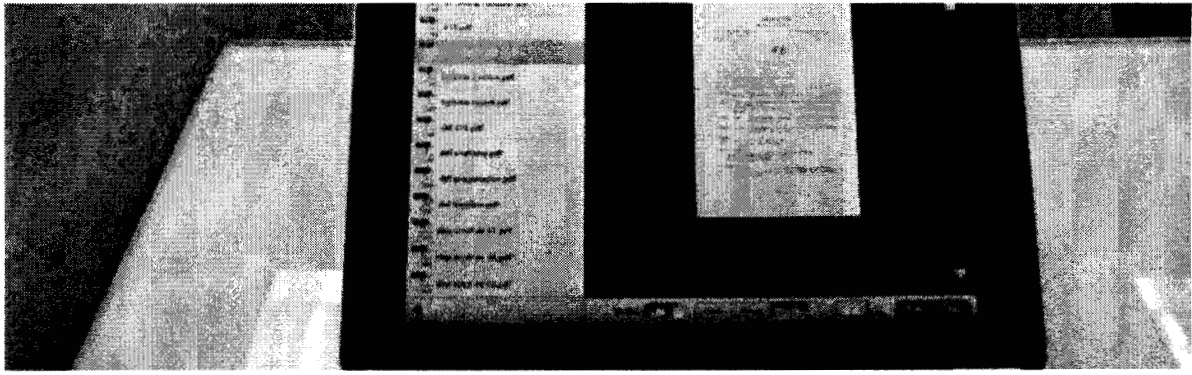




black pdf that I named “-” so that it would stay at the top of the list

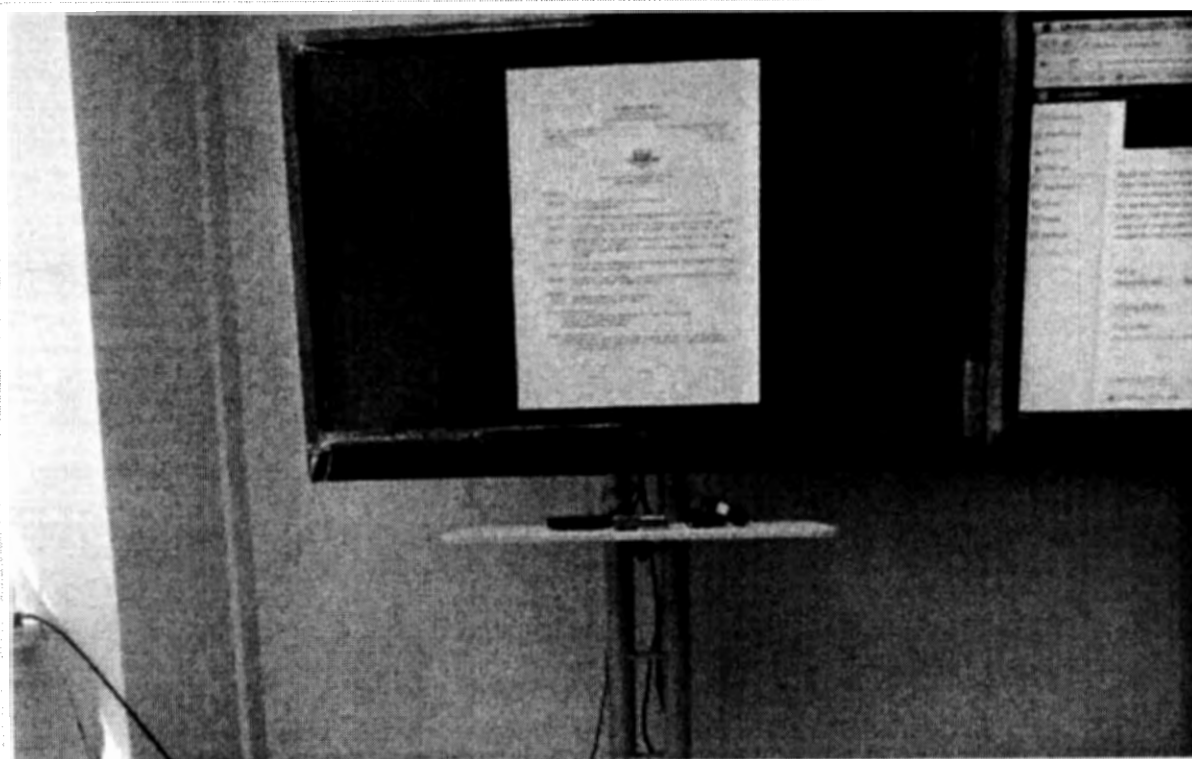
So, to avoid using the blank setting, I made a pdf of all black pixels and I would publish that to the jury to “clear” the screen. (that being said, when using AirPlay to connect the iPad to a projector or TV, I don’t seem to get this logo. weird.)

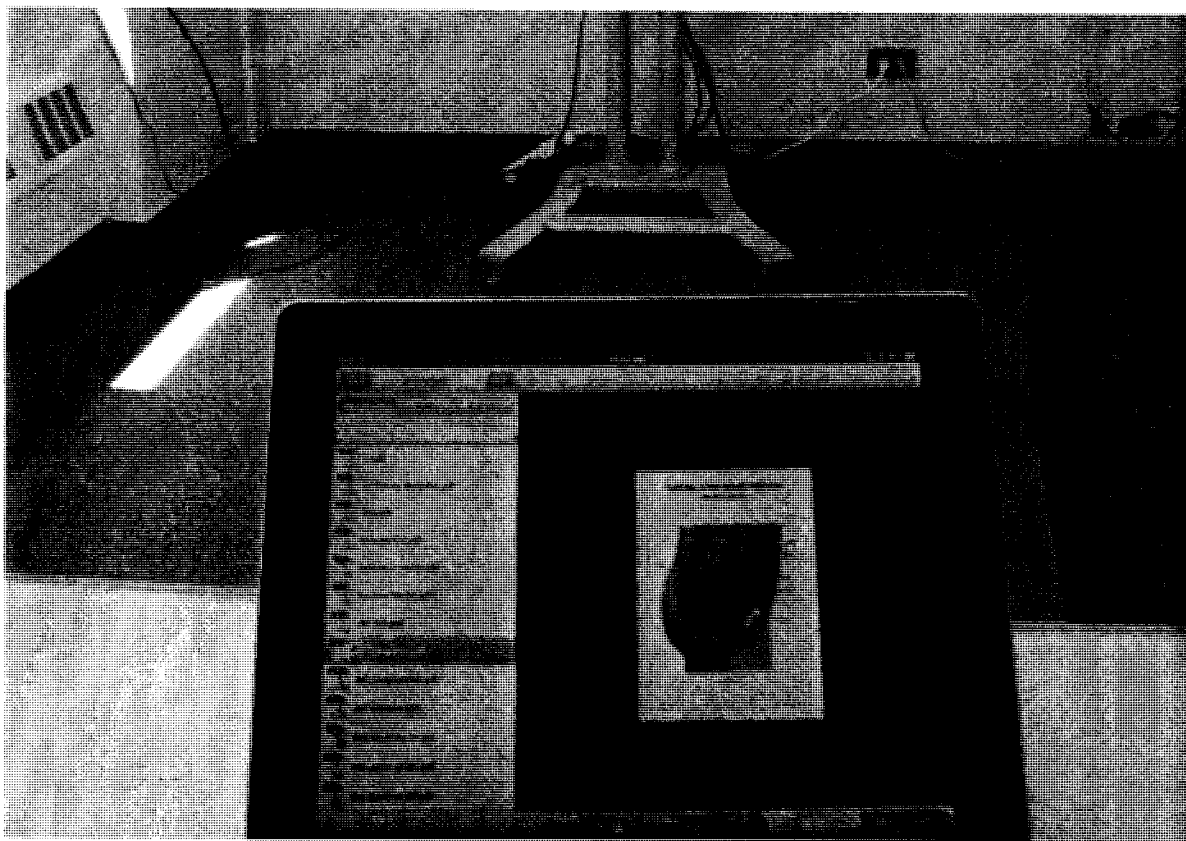




reenacted iPad and juror screen at my office

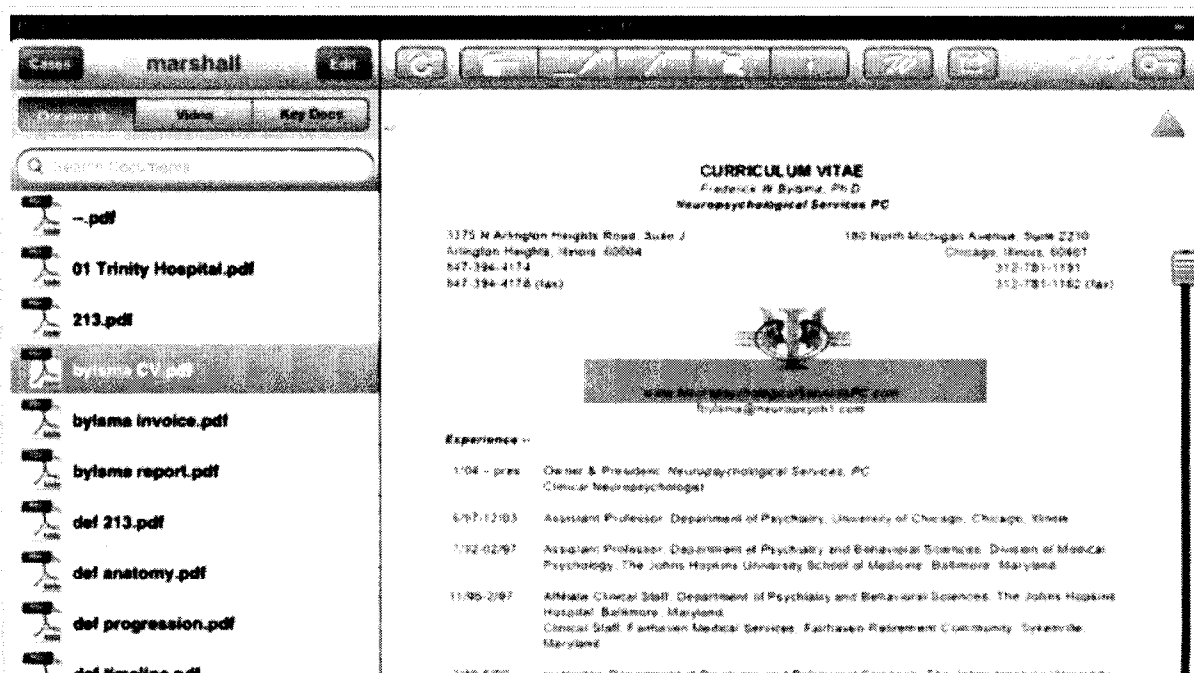
To publish your exhibits, hit the Present button. When you do that, whatever you have in your right hand side of the screen will show up on the projector screen or TV or whatever you have connected to your iPad. Images go up fairly quickly, although it did feel sluggish most of the time. If you leave the Present button on, then any annotations you make, such as highlights, circles, or underlines, and any pinching and zooming that you may do will be replicated on the jurors screens in realtime. But this, too, felt pretty sluggish. If you go to another page or click on another exhibit, the jury will be shown that immediately.

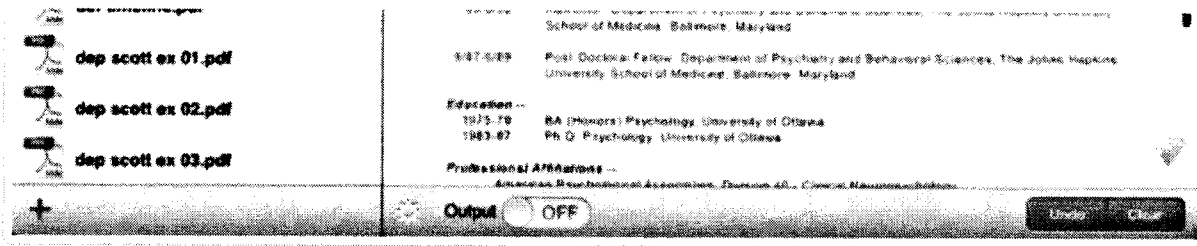




use Freeze to show one exhibit while cueing up the next

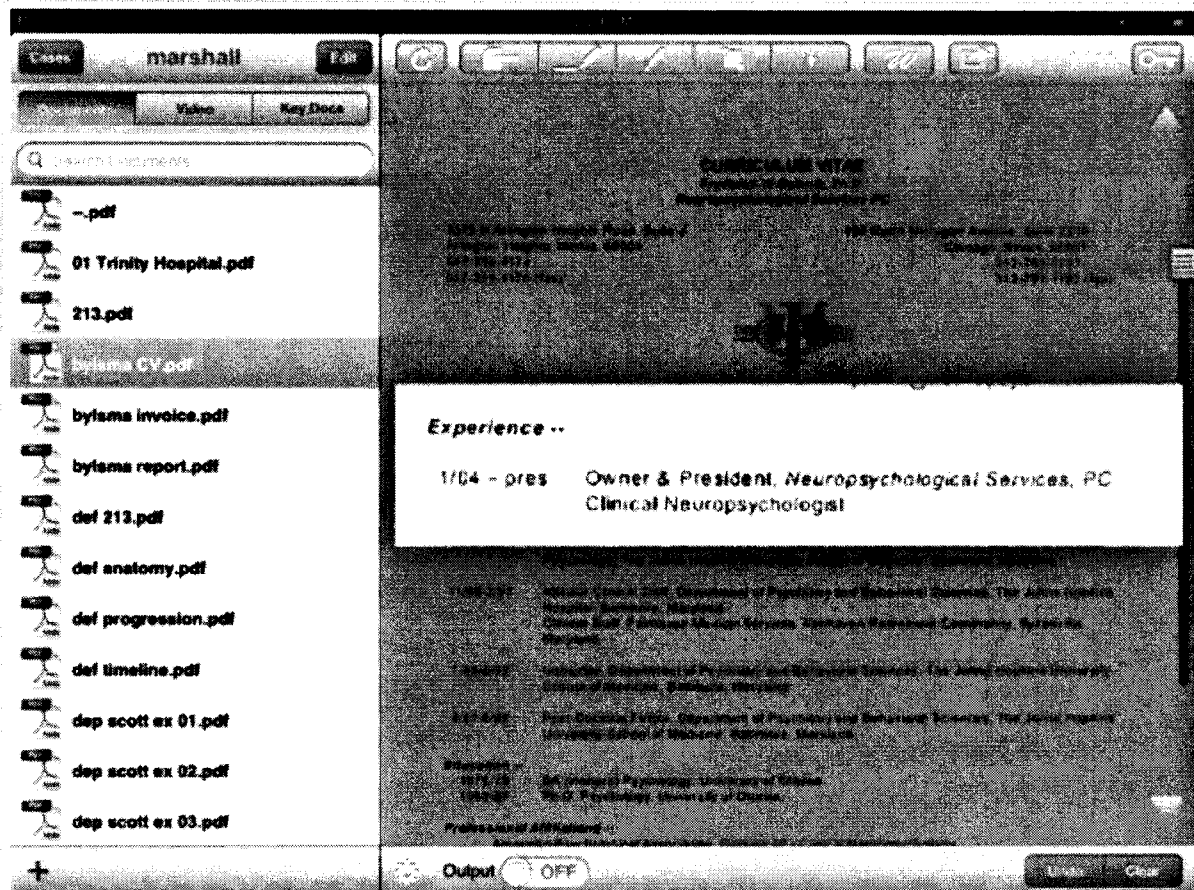
If, however, you want to search or cue up your next exhibit while the current exhibit remains displayed to the jury, you'll want to use the freeze setting.





highlighting with TrialPad

There are a couple of options when it comes to marking up or annotating an exhibit, once you've got it on the screen. The first I'll discuss is the highlight option. You click on the second icon, and then draw out a rectangle with your finger. When you release your finger, a true highlight (not just a semi-opaque yellow box) will appear. Like many things in TrialPad, this worked great, but it was a bit laggy.

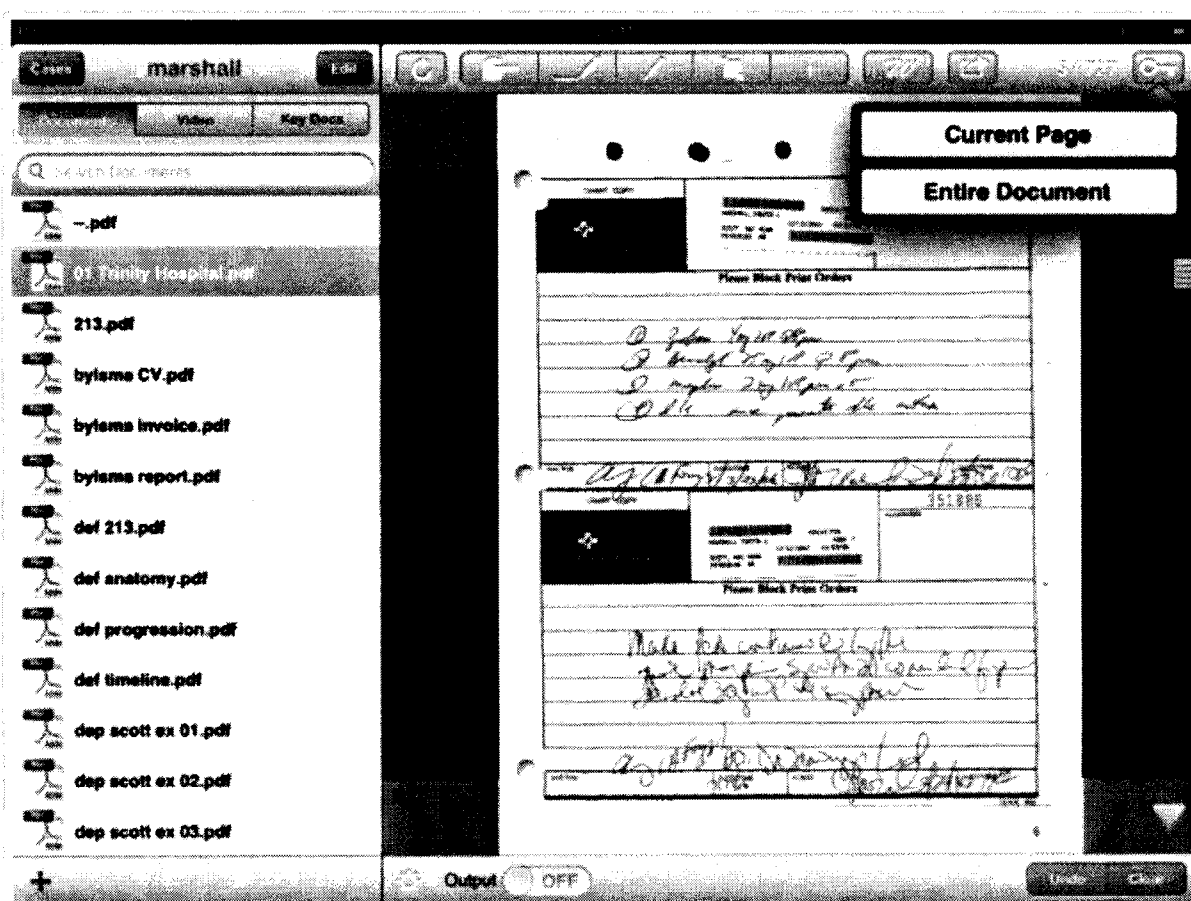


nice callouts, albeit a bit superfluous

The next tool I'll discuss is the callout tool. This is a tool that Trial

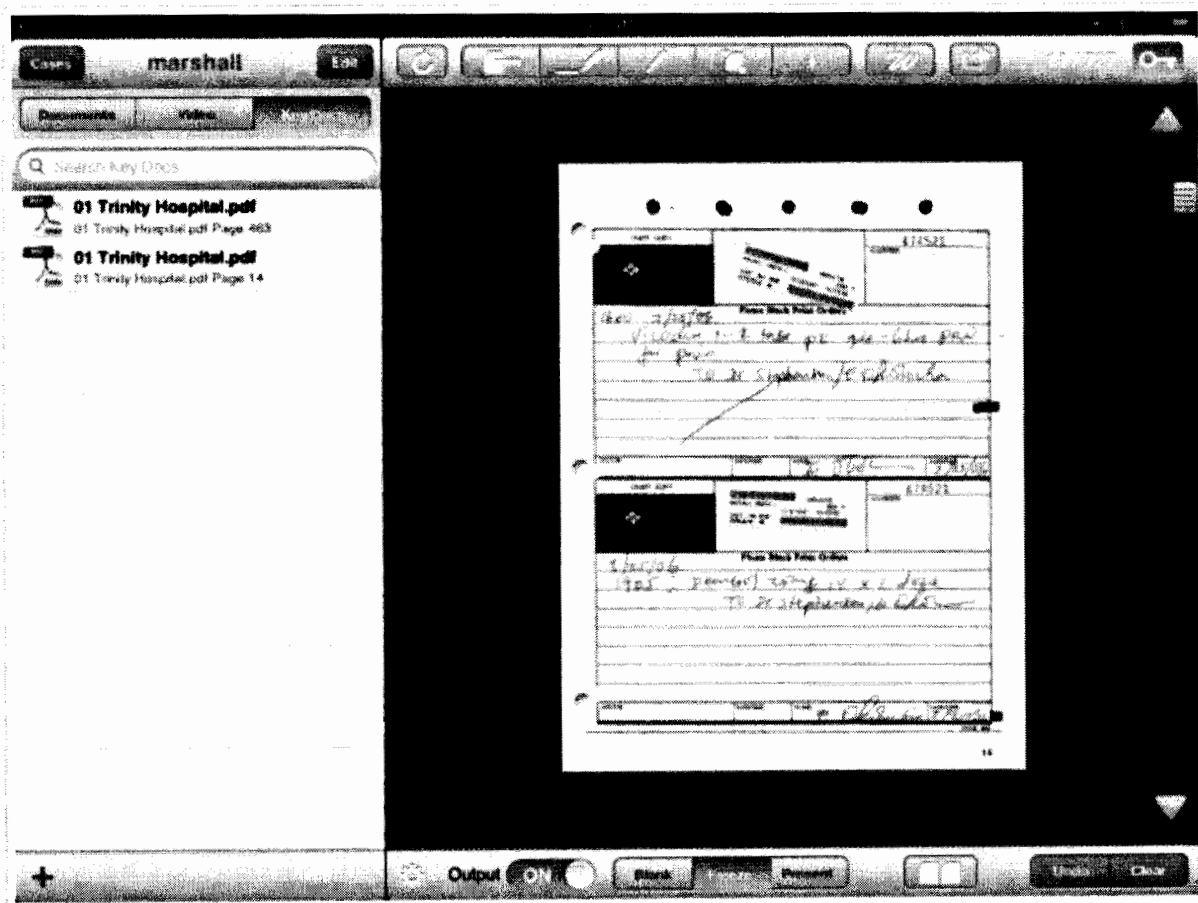
Director and Sanction users will feel very familiar with. I like the effect, generally. And, like everything else in TrialPad, it was a bit laggy when publishing to the jury screen (note: I am using an iPad2). But, when you're using the iPad, it seems unnatural to do any kind of zooming that isn't pinch and zoom. So, while I use this type of function a lot on the laptop counterparts to this kind of software, on the iPad, I never really used it.

There are other tools, such as a pen and a rectangle box tool that I presume is useful for redacting documents. You can hit the W button and you'll get a whiteboard that you can play with. And finally, you'll get a laser pointer tool, which any iPad user who has presented from the Keynote app will feel very familiar with.



you can keydoc a single page or the entire doc

But I think other than the highlight button and pinch and zoom, I think the most useful button I used was the key doc tool. One of my exhibits was a 700+ page medical record, where a handful of the pages were going to be used over and over again. Whenever I got to a page that we showed to the jury, I would hit the key icon, and it would save that page in the key docs section of the menu (near the top of the left side bar).



key docs is for your frequently used documents

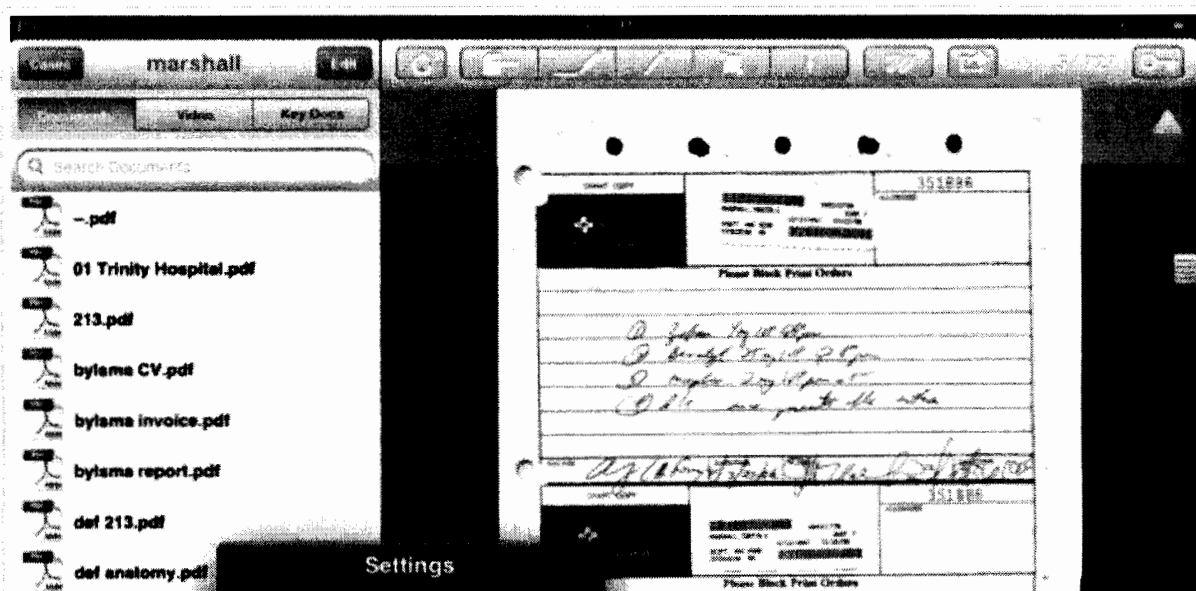
But, something to remember about using key docs (and some might consider this a major flaw in the key docs) is that, when you press that keydoc button, it creates a screenshot image of the page that you selected and creates a new file for it. Contrast this to say, a bookmark

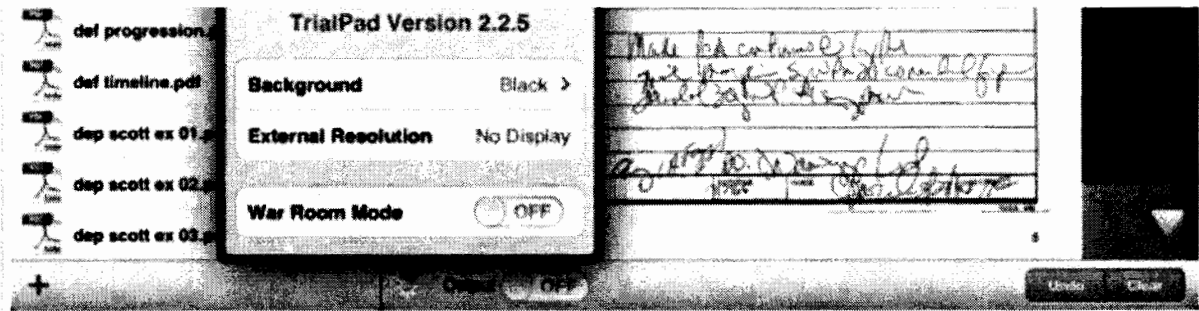
in a pdf document. A bookmark just creates links to different parts of the document. The key button creates new documents.

What does that mean? That means that if I have keyed page 111 of my document and select it from the key docs section, I can't advance to the next page to reach 112. I have to go back to the main Documents section of the left side bar, pull up the document, it will default to page 1, and then I can navigate to page 112 (which is time consuming due to the navigational inaccuracies funkiness of this app. see above).

But overall, I still like it. And for a trial where we spent most of our time jumping around between a set of about 10-20 pages interspersed throughout the 700+ page document, the key docs section was nice.

Overall, I felt like using TrialPad was super easy. It was as intuitive as email but had some of the useful annotation functionality of a full fledged trial presentation program. It had some slowness issues when it came to replicating what I was doing on my iPad to the jurors' projection screen, but it was still quite useable.





match the output settings to your projector resolution

One last note: I was using the iPad with a projector (on my client's request). My 120" projector screen is 4:3 ratio. The default on TrialPad, however, is widescreen. To fix this, hit the cog wheel to access some external resolution settings, and this was no longer a problem. This feature was very thoughtful and really impressed me.

Tomorrow, I'll address using an iPad for opening statements and, specifically, changing up content and slides on the fly.

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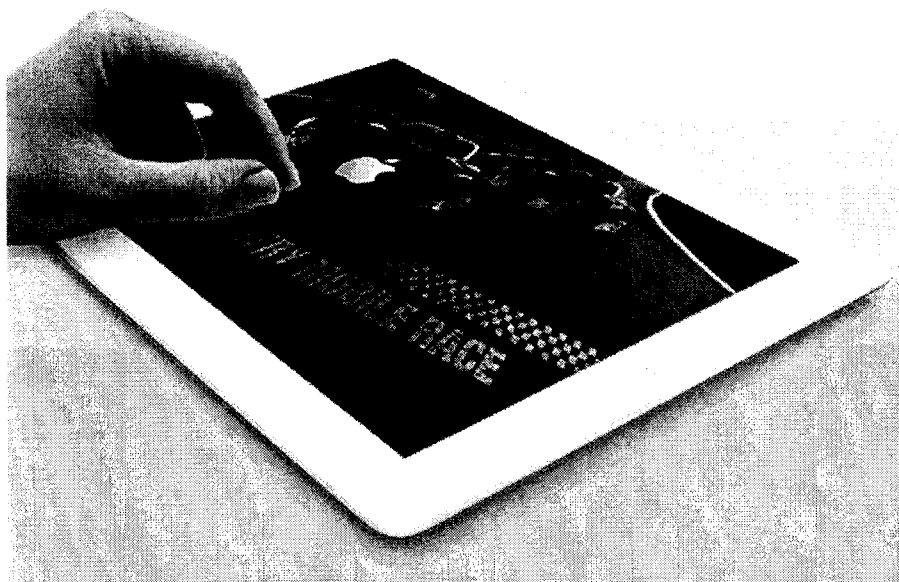
TechnoLawyer Blog: A Special Report on Tablets in the Legal Industry: iPad, iPad mini, and Surface With Windows RT

Friday, November 16 2012, 1:20 PM

A Special Report on Tablets in the Legal Industry: iPad, iPad mini, and Surface With Windows RT

By [Neil Squillante](#) | Tuesday, October 30, 2012

Originally published in our [free TL NewsWire newsletter](#). Instead of reading TL NewsWire here, [sign up now](#) to receive future issues via email.



Legend has it that Steve Jobs did not want to create a tablet unless it could attain a level of utility beyond surfing the web in the bathroom (though I suspect many iPads spend a lot of quality time there).

Hundreds of tablets currently exist, but only three can handle serious legal work. Coincidentally, all three of these tablets launched within the past week:

- [iPad \(Fourth Generation\): \\$499 to \\$829](#)
- [iPad mini: \\$329 to \\$659](#)
- [Surface with Windows RT: \\$499 to \\$699](#)

You've no doubt read about these tablets in mainstream publications. Therefore, instead of describing them in typical [TL NewsWire](#) fashion, I'll discuss them in the context of the legal industry.

Paper Replacement

Earlier this week, I published an opinion essay — [Can the iPad mini Play a Role in the Lives of Lawyers?](#) — in which I suggested using the iPad mini for note-taking.

Note-taking on a tablet is currently a niche activity. The iPad and Surface with Windows RT seem (to me) too large and heavy for note-taking. The iPad mini may or may not make tablet note-taking more mainstream.

Here in *TL NewsWire* we deal with facts, not conjecture. So by paper replacement I refer not to note-taking, but to the far more popular activity of storing documents on a tablet that would otherwise reside on paper for reading and sometimes editing or marking up.

All three tablets can handle this task so it's more a matter of budget and preferences. The 1.4 pound iPad has the best display — 9.5 inches at 2048 x 1536 pixels and 264 pixels per inch (so-called "retina"). Microsoft's Surface with Windows RT weighs a tad more at 1.5 pounds, but it has a larger 10.6 inch widescreen display at 1366 x 768 pixels. The iPad mini clearly trades pixels for weight — 10.9 ounces and a 7.9 inch 1024 x 768 pixel display.

While all three tablets include a built-in file viewer for common document formats such as DOC and PDF, you may want a more robust tool. The App Store contains a plethora of apps for storing, viewing, and editing documents (including Apple's Pages, Numbers, and Keynote). Few third-party apps currently exist for the Surface with Windows RT, but it includes Microsoft Office (touch-enabled versions of Word, Excel, PowerPoint, and OneNote) at no extra charge.

Remote Control of Your Mac or PC

Currently, there's no contest for this common activity. The iPad wins for three reasons — apps, pixels, and connectivity.

In a recent article — [Eight Reasons Why Windows 8 \[sic\] on a Tablet Won't Fix Our Legacy Windows Desktop Apps Problem](#) — virtualization expert Brian Madden writes, *"While it's true that you can access Windows desktop applications from your ARM-based tablets via remote Windows environments like Remote Desktop or VDI via protocols like RemoteFX, HDX, PCoIP, or VNC, the experience of using the remote Windows app has nothing to do with the local tablet OS. It literally doesn't matter if your tablet runs Android, iOS, or Windows 8."*

Currently, more remote control apps exist for the iPad family than for the Surface with Windows RT. You name it and the App Store has it — VNC apps like [Screens](#), cloud apps like [LogMeIn](#), and local network apps like [Splashtop](#).

That said, you probably need just one app. That's why pixels matter even more. For example, my computer is connected to a 24-inch NEC monitor with a resolution of 1920 x 1200 pixels. Thanks to the iPad's 2048 x 1536 pixels, even my large display fits comfortably within a remote control app. By contrast, displaying my computer on the iPad mini or Surface with Windows RT would feel cramped at best and perhaps even unusable.

Finally, you can order an iPad (and iPad mini) with LTE cellular data service — recommended if you want to remotely control your computer from anywhere. By contrast, the Surface with Windows RT only features WiFi.

Laptop Replacement

Ultrabooks like the MacBook Air don't just weigh more than a tablet, they cost more. Depending on your needs, a tablet may suffice as a laptop replacement when traveling. It may even better serve your needs if you primarily want to read documents (see above), stay on top of your email, and use legal-specific tablet apps (see below). Also, keyboard cases for tablets have become a cottage industry.

The Surface with Windows RT is the most laptop-like out of the box as Microsoft offers two keyboards — the soft Touch Cover (included with two of the three models) for light typing and the Type Cover (\$129.99) for faster typing speeds. As their names suggest, they both serve as a protective cover too. Also, the Surface with Windows RT has a retractable Kickstand for propping it up on a desk in landscape orientation while you type.

For the iPad, you'll need to look to third parties such as [Logitech](#) and [ZAGG](#) for integrated case/keyboard solutions.

We'll need to await the iPad mini reviews before we know for sure, but its 5.3 inch width in portrait mode may make it an excellent device for thumb typing on the software keyboard (I often write this newsletter on my iPhone using [ByWord](#) so I look forward to trying to write this newsletter on the iPad mini).

Legal-Specific Apps

The iPad wins this category hands down since Windows RT just, well, surfaced (legacy Windows software doesn't run on Windows RT). Apple launched its iOS programming tools and App Store in 2008. The iPad surfaced (pun intended) in 2010. So app development for the iPad has a two and a half year head start — and longer than that really because software developers began familiarizing themselves with iOS app development in 2008, initially for the iPhone.

As discussed in our recent TL Research report — [Can Microsoft Win the Legal Industry's Mobile Race?](#) — Microsoft has often played the role of the tortoise that comes from behind to win the race. But in addition to the problems with this strategy in the mobile computing market that I discuss in the report, another problem exists — a lack of excitement among software developers.

When Apple launched the iPhone in 2007, software developers were so excited that they "jailbroke" their iPhones so they could start writing apps — a year before Apple officially sanctioned app development. I don't see a similar level of excitement among software developers for Windows RT. And I'm a good judge because we cover more than 225 new products in *TL NewsWire* each year.

Even Android tablet apps lag far behind the iPad. Recently, lawyer Jeffrey Taylor of The Droid Lawyer tried to downplay the importance of legal apps in his article — [What About the Lawyer Apps for Android?](#) Nice try Jeffrey, but legal apps are important. That's why most law firms use Windows PCs.

In just the past few weeks, we've covered three legal iPad apps — [JuryStar 2.0](#), [TrialDirector](#) for iPad, and [Westlaw Case Notebook Portable E-Transcript](#). Jeffrey can point to only two legal-specific Android apps this entire year — [Depose](#) and [Mobile Transcript](#), the latter of which is also available for the iPad.

Admittedly, some law firms don't use legal-specific software or use legal-specific cloud applications that should work fine on the Surface with Windows RT. And Microsoft Word and Outlook remain the most widely used software products in the legal industry by a country mile (there's no Outlook yet for Windows RT but I suspect it'll arrive eventually). That's why I listed only three tablets at the outset of this article, none of them Android. Microsoft Office plus cloud applications gives the Surface with Windows RT a fighting chance in the legal industry even if no Windows RT legal apps ... surface.

My Tablet Usage (For Now)

For those of you who care about my tablet usage (even though I work at a media company and not in a law office), I currently own a white 32 GB Verizon iPad 2 that's headed for eBay. That's because I preordered two white 32 GB Verizon iPad minis — one to replace my iPad 2 at home (mostly for personal and work-related reading), and one to use at the office solely for work-related tasks. Specifically, I plan to use my office iPad mini to replace paper — including note-taking, thus

putting my opinion about that task to the test. I'll also take advantage of its LTE hotspot functionality if we have an Internet outage.

Update: [Read Jeffrey Taylor's rebuttal to my article.](#)

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Technology in the Courtroom Trial lawyers find new ways to use the iPad to help try cases > Detroit Legal News

Monday, December 31 2012, 12:03 PM

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By Sylvia Hsieh

The Daily Record Newswire

BOSTON -- Trial lawyers keep finding new ways, some expected and others surprising, to use the iPad to settle cases, prepare for litigation and try cases.

The big change is that lawyers have moved from using the iPad purely for content consumption to putting it to work in all aspects of litigation.

James R. Moncus, a personal injury attorney, won a \$37.5 million jury verdict using the iPad in a three-day dram shop trial last year.

He co-presented a webinar earlier this year for the ABA Law Practice Management Section called "iPad for Litigators" that sold out, and a replay this month drew a full house.

Driving the constantly more innovative uses of the iPad for trial lawyers is the huge assortment of

apps, according to Jim Calloway, director of the Oklahoma Bar Association's Management Assistance Program and a co-presenter at the webinar.

"There are many, many apps for the iPad designed just for lawyers. I have no trouble telling lawyers when they ask my opinion, yes, I really think they're better off with an iPad than with other competing tablets that don't have apps for lawyers," said Calloway.

Apps that help lawyers take notes and mark-up PDF files include GoodReader, PDF Expert and iAnnotate. Calloway also suggested that lawyers invest in a stylus for \$15-\$30. He recommends three: Adonit Jot Pro, Kensington Virtuoso and Wacom Bamboo.

Several jury selection and juror-tracking apps like iJuror, JuryStar, and Jury Tracker also make the iPad suitable for trial.

But the real game changer for trial lawyers is TrialPad, an application that is easy to use and at \$90 is thousands of dollars less than traditional trial software.

"TrialPad allows you to convert all exhibits to PDFs and display them to the jury," said Calloway. "If the judge has a concern you can show the judge what you're about to display first. It gives you the ability to draw on documents, make redactions and save what you've done. You can show the jury a page of a contract and use a callout tool to draw a box around a paragraph of an exhibit and -- boom! -- it blows that up so they can read it. The visual is stunning."

Trial by iPad

Last April, Moncus put aside his usual pre-trial routine of handing over all his trial materials to people his firm hires to load, cue up and handle the technical equipment at trial.

Instead, he loaded all the documents onto his iPad on his own.

"I thought it would be neat to be in control of the presentation rather than barking instructions at someone," said Moncus, an attorney at Hare Wynn Newell & Newton in Birmingham, Ala.

Moncus represented the family of a police officer killed while responding to a dispute at a restaurant between the manager and his wife, who also worked at the restaurant. The manager shot the officer in the parking lot. Moncus sued the restaurant for allowing the manager to serve himself alcohol and get drunk on the job.

It was a high-stakes case, but one without a ton of documents -- less than 50. This made it a suitable candidate for using the iPad at trial for two reasons: loading the documents yourself can be time-consuming and fewer documents makes it easier to know where to find each one. (One drawback to using an iPad at trial, he said, is that if there are other lawyers working with you they all must use the iPad, too.)

Using TrialPad, a projector and screen, an adapter and a VGA cord to connect them (a long one so he could move around the courtroom), Moncus conducted the trial from his iPad, showing the jury diagrams of the parking lot where the officer was shot, medical records and depositions.

"Using the iPad to show documents to the jury is so, so much easier than trying to learn how to use a sophisticated program like TrialDirector. ... I just put my finger on it and it's there. It feels like I'm a little bit more in control and it's more seamless," said Moncus.

He also used the iPad when questioning witnesses.

"If a witness had a previous statement, I pulled up the statement and could highlight a sentence or blow it up in real time. The jury is seeing it as you're dragging your finger across the screen," said Moncus.

The iPad not only helped him win a \$37.5 million verdict, it also saved him money.

"Most lawyers don't have a staff of people [to manage TrialDirector software]. It can cost \$1,000-1,500 per day," he said.

Moncus used the iPad again in a med-mal trial, but less extensively because of the larger number of medical documents in that case.

Send an iPad

Two personal injury plaintiffs' attorneys in Phoenix have also incorporated the iPad into their litigation practice.

James Goodnow and Marc H. Lamber of Fennemore Craig have replaced the written settlement packages they send to opposing counsel with the iPad.

The lawyers film their clients, their expert witnesses and themselves spelling out their case at an in-house studio. They load this onto an iPad, delete all other apps and ship it to opposing counsel.

The lawyers say they have settled several catastrophic injury cases for confidential amounts using demand packages on the iPad.

They say the iPad was a natural extension from the paper, videotape, laptops and CDs that they used to use to present to opposing counsel.

"We used to send a video demand by disc, but sometimes it wouldn't open because [opposing counsel] wouldn't have the right software," said Lamber, chair of the firm's plaintiffs' personal injury practice group. "The iPad represents a complete package."

The practice group also sends an iPad to clients who are catastrophically injured, are hospitalized or have limited ability to communicate with them.

"We call it the red phone communication device," said Goodnow.

The lawyers load a client's entire file on the iPad and enable Google Voice, Skype and the video camera.

"They are always able to reach us. That's a big criticism of lawyers that sometimes we're just not accessible. When [our clients] have an issue and need help, we are available for them 24/7. It makes a

profound difference in their life," said Lamber.

To address security concerns, the lawyers use a cloud-based service and provide a password for clients to log on to view their files on a secure site.

On the fly

Dan Friedlander, a business and real estate litigator, used the iPad to do some legal research on the fly in court recently.

During arguments on a motion in limine in an unlawful detainer case, the other side argued Friedlander's client couldn't evict its commercial tenant, which was in bankruptcy, and cited a case Friedlander had not read.

Equipped with his iPad, 3G network and WestlawNext app, Friedlander asked to review the case on the spot.

"Basically I said to the judge, 'I would like to look up this case very quickly.' I read the case -- it was not a long case -- and within five minutes I was able to address opposing counsel's arguments," said Friedlander of Klein Friedlander in Westlake Village, Calif.

Although he had used his iPad for research many times at home and at work, it was the first time he had done so in court with a judge waiting.

Friedlander, won the motion, and said he envisions using the iPad in a full-blown trial in the right case.

Published: Wed, Apr 11, 2012

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iPads in Deepwater

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iPads in Deepwater

Trial team turns to iPads and apps to process a tsunami of documents.

By Robyn Weisman [Contact](#) [All Articles](#)

Law Technology News

December 1, 2012

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Illustrator: Jakob Hinrichs

When the Deepwater Horizon oil rig exploded on April 20, 2010, few people could conceive of the magnitude of personal injury and economic and property damage in the states bordering the Gulf of Mexico that would result from the three-month spill of 4.9 million barrels of oil. Under the Oil Pollution Act of 1990 (101 P.L. 380), a party responsible for the discharge of oil from a vessel or facility "into or upon the navigable waters adjoining shorelines" is liable for the removal costs and damages resulting from the discharge. A number of BP entities, along with Transocean, which operated the rig, and Halliburton, which was tasked with stopping the oil spill, were sued for Deepwater's damages under OPA. *In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico*, April 20, 2010 (MDL NO. 2179), Case No. 10-me-2179, E.D. La.).

On Aug. 10, 2010, to eliminate duplicative discovery and prevent inconsistent pretrial rulings, the U.S. Judicial Panel on Multidistrict Litigation consolidated 77 actions pending in Alabama, Florida, Louisiana, Mississippi, and Texas before [Judge Carl Barbier](#) in the U.S. District Court for the Eastern

District of Louisiana. Barbier chose 15 attorneys to form the Plaintiffs' Steering Committee. Kirkland and Ellis partners Richard Godfrey and J. Andrew Langan, and Robert Brock, a partner at Covington & Burling, led the defense team, which offered "no comment" for this report.

Both sides cooperated to produce documents and write the majority of the Pretrial Order about document production and e-data, said Magistrate Judge Sally Shushan. After 18 months of discussions, days before the first phase of the trial was scheduled to begin, the committee negotiated an agreement with BP that, among other things, included an estimated \$7.8 billion settlement fund for economic loss and medical claims and a waiver of OPA requirements. With the waiver, individuals and non-municipal or governmental entities go directly to a website supervised by U.S. District Court, Eastern District of Louisiana to file claims against BP. "There's a strong presumption of entitlement written into the settlement terms," said Jeffrey Breit, a partner at Norfolk, Va.-based personal injury firm Breit Drescher Impreveto & Walker and a member of the PSC.

"The one thing we didn't want to happen was to have this turn into another Exxon Valdez," said Shushan. "We want to get this case resolved, get people who settled their cases paid, and keep it organized and ongoing." With fast-tracking, the PSC needed to review 83 million pages of reports, pleadings, depositions, etc. Days after the PSC's first strategy meeting in Oct. 2010, documents began pouring in. "Government agencies were generating reports of 400 to 500 pages, and pleadings were arriving by the bucketful," Breit recalled.

John Roy, an associate at Domengeaux, Wright, Roy & Edwards, managed the PSC's review team, with "roughly 300 attorneys from 91 different firms from around the country," said Breit, and 40 to 50 contract attorneys assisting with document review, deposition, trial preparation, and other tasks.

The plaintiffs used Redondo Beach, Calif.-based iConect Development's nXT software to cull multiple terabytes of data. BP provided plaintiffs with all files from employees who dealt with cement, each given a Bates number and stored on an external hard drive. The iConect team then catalogued the electronically stored information and filtered out documents that didn't match basic criteria, such as date ranges.

After the initial cull, attorneys were given batches of 500 to 1,000 pages of files to determine relevant keywords to further cull the ESI. Reviewers tagged files either as irrelevant or hot, Roy said; a second team reviewed the first team's work. While this significantly thinned out files, the team still faced thousands of documents to manually review. So the PSC turned to Apple iPad tablets. It was a "game-changer," Breit said.

The first-generation iPad had been released a few weeks before the Deepwater explosion and several members of the PSC were using the tablet to check email, access the web, and take notes. Breit did not initially view the iPad as a litigation tool. Although he observed that the tablet was effective for reading PDF files, the iPad was only as useful as its apps.

Breit tested GoodReader, a PDF reader and organizing tool, but it did not easily mesh with the team's needs. Then Miami-based Lit Software launched TrialPad. Breit saw he could use the \$89 app to organize the BP litigation. He developed a tab system where a complaint would be filed in the tab "Pleadings," which would also store the answer, interrogatories, requests for production, and witness information, "all broken down into a tree," Breit explained. But he didn't know how to set up TrialPad

in a way that would enable everyone on the litigation team to access his file system until he talked to [Ian O'Flaherty](#), Lit Software's chief software architect. O'Flaherty explained that Breit could pair TrialPad with Dropbox, a low-cost online web-based service, to allow his team access to files stored on Dropbox directly from an app like TrialPad.

Breit was impressed with how easily the TrialPad and [Dropbox](#) digested large volumes of data, such as a 500-page PDF report that included slides, photos, and other ancillary materials. TrialPad also included tools that helped Breit zoom, highlight, and handwrite notes on PDF files. He could email a paragraph, a page, or a document to others on the trial team.

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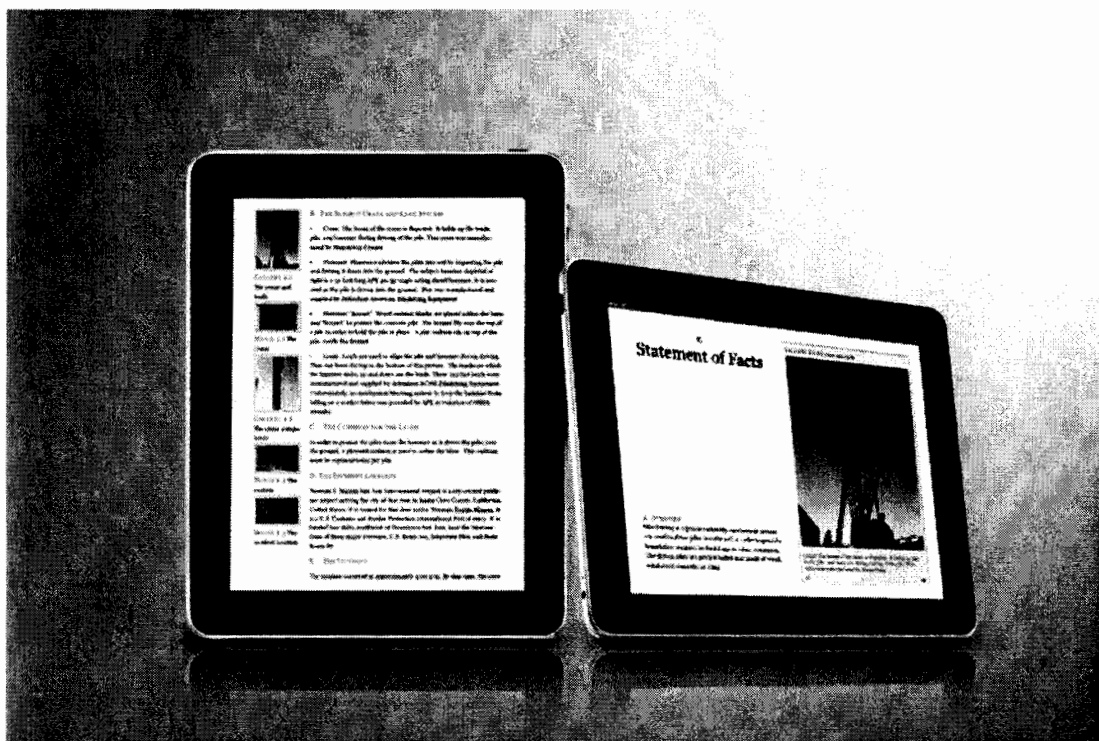
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LITIGATION: TRIAL TECHNOLOGY



IPads at trial

With recent advances in technology, attorneys can go beyond the basic apps to make compelling case presentations



Morgan C. Smith

Attorneys often ask me about the use of iPads in their practice, and they especially want to know how the iPad can help in mediation and trial. I start by telling them the good news: that the number of highly functional and practical apps developed specifically for attorneys has increased dramatically, making the investment in an iPad for your practice much more attractive than even six months ago.

Then I tell them it pays to invest at least a few hours to learn how to optimize the iPad for case management and litigation presentations. Otherwise, that cool tablet may stay parked by the bedside as a high-powered tool to read a digital newspaper (or a toy that kids run off with to play Minecraft).

If you're considering spending \$600 on a new iPad, or if you already own one and are figuring out what to do with it, this article will help

by covering some of the key technical issues and apps that assist attorneys in myriad ways.

NEW IPAD VERSUS IPAD 2

Should you buy the latest and greatest iPad? Sure, if you don't have an iPad already. If you have the slightly older iPad 2, it will serve you fine for the foreseeable future, since at present time the best apps for attorneys were designed for the iPad 2 and work equally well on both.

The primary difference between the models comes in the screen and processing speed. The new iPad (which is not officially called the iPad 3, but "the new iPad") has a "retina display" that has a much higher resolution than the iPad 2. This means photographs, images and text appear sharper than on the older model; however, if you are looking at websites, you will probably notice that the photos look bad because the iPad screen has finer detail than lower-resolution photos online.

The new iPad also has about twice the processing speed of the iPad 2, which doubled the speed from the original iPad. Additionally, the new iPad works on the 4G network, so download speeds over the networks (at a minimum cost of \$20 per month) are greatly enhanced.

LAW PRACTICE MANAGEMENT

Once the shiny new iPad is out of the box, what should you consider putting on it to help your practice? Far and away some of the most useful apps for attorneys have to do with file management and accessibility.

Apps like Dropbox.com and Box.com are two of the leading "cloud" file management systems around. With these services, you can

access any of your case documents that you put on the server anywhere at anytime from your iPad. You can view PDFs, Word documents, movies and most anything else. These apps really help attorneys have their entire office file system at their fingertips in deposition, mediation, trial or any other situation.

There is seemingly no end to the various billing programs available for iPads and iPhones that attorneys can use to help keep track of time. For solo practitioners and small firms, I personally have been very happy with bill4time.com, which is entirely online and has a good iPhone and iPad app that allows you to enter your time by client and case, and online you can easily create invoices to email to clients.

If you don't already have a good PDF reader for your iPad, I recommend either Goodreader or PDF Reader by Adobe. Either is very important since so many legal documents are in this format. I also recommend iPleading, which creates formatted documents for filing in state and federal courts.

Finally, the Fastcase app provides primary law access for both federal and all states — very handy and free.

PRESENTATIONS

While I like using my iPad for the practice management tasks described above, I'm most excited about using it for presentations. If you're interested in utilizing the iPad to present your case, I have the following recommendations.

You've probably heard about and perhaps even tried creating "e-briefs" to consolidate and

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Soldiers of the patent wars

Animesh Kumar 14

Courtroom drama

Tam Harbert 15

Best courtroom projectors

John Edwards 16

Gambling on new trial technology

James Moncus III 18

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Morgan C. Smith is the owner of Cogent Legal, a litigation graphics and trial strategy firm based in Oakland that develops visual presentations for attorneys to use in mediation or trial. Services include animations, time lines, informational graphics, medical illustrations, interactive presentations and e-briefs. Smith blogs about litigation graphics, legal strategy and technology at cogentlegal.com/blog.

See SMITH page 20

Soldiers of the patent wars

The nature of IP litigation is shifting from using vast armies of review attorneys to SWAT teams of tech experts



Animesh Kumar

With nearly 20 lawsuits in nine countries, Apple Inc. and Samsung's ongoing legal battles highlight a widespread patent war that shows no signs of a cease-fire. Aggregate damage awards in technology patent lawsuits have surpassed \$4.8 billion since 2006, with individual awards as high as \$300 million in the past three years. There is no doubt that we've entered a new era in patent litigation, that's escalating almost as quickly as the technology in question.

This stands in stark contrast to what was happening few years ago. Smaller patent holders, the so-called trolls, were litigating against large companies, and exposing the true value of technology patents in the process. But with a lower success rate of 21 percent in 2010 — similar to the trend seen in the years prior to the heydays of 2008 and 2009 — the stigma that was attached to the trolls for taking legal action is swiftly disappearing.

Increasingly, litigants are now large practicing entities that spend millions of dollars

Animesh Kumar is co-founder and chief solutioning officer of iRunway, a technology research firm specializing in litigation support and patent portfolio analysis. The company has offices in Austin, Palo Alto and Bangalore, with plans for expansion in New York and Washington, D.C.

on research and product development, trying to protect their business interests against other large corporations. With more "me-too" products entering the market en masse, innovative companies that hold patents will be forced to guard their strategic position in the market. And more often than not, these turf wars will be driven less by monetary goals than by the need to fight and take the competition out.

Large corporations licensing or selling their patents, often noncore, to nonpracticing entities is another trend that's emerging. Apple signing cross-licensing deals with Digitide Innovations (an NPE) is one such example of an indirect route big companies are taking to ward off competition, in this case its "smartphone" opponents.

That said, litigation can be extremely challenging, with an uncertain time line, and more importantly, an uncertain outcome. It comes as no surprise therefore that corporations and law firms are seeking to add more efficient and effective tools in their artillery to fight these technology battles.

With median litigation cost of \$6 million to \$7 million for lawsuits with more than \$25 million at risk, law firms are splitting the process into different streams — of both work content and expense — and looking at ways to increase the predictability of a favorable outcome at reduced costs. While improved vendor management and alternate billing structures are steps in the right direction, these do not directly affect the outcome of the litigation.

The key to a favorable outcome in litigation has proven to be the critical "insight" on the disputed product — the evidence. And the sooner you find it, the lower your cost to take the litigation to a successful

outcome. But an explosion in the volume of electronically stored information and the amended Rule 26 of the Federal Rules of Civil Procedure, which govern production of evidence in most court cases, have made it tougher for the legal teams. Lawyers are beginning to realize that it's not the volume of data, but what you find in it and how soon you find it that matters. Having to keep pace with court deadlines without significant impact in the analysis has

whose specific task is finding targeted evidence.

Intellectual property, especially patents, differs greatly from other legal processes. It is technology-intensive and demands a microscopic level of understanding of engineering processes within a legal framework.

Trends within the technology world have revealed a significant, unmet need for technical expertise that enables the legal community to unearth hard-hitting evidence. Imagine a bunch of lawyers analyzing a plethora of white papers and configuration charts around "direct sequence spread spectrum signaling" of 802.11b and 802.11g wireless protocols across 2.4, 3.6 and 5 GHz frequency bands in OFDM modulation! This requires special competency — the measure of which deals primarily with intellectual insight and outcome of the litigation.

Law firms involved in the growing technology patent arena are increasingly relying on these technical insights to win the case — and this insight is most likely to come when attorneys, experts and specialty technologists work together.

One such law firm that has had a lot of success, McKool Smith, has stated that it relies heavily on a single transformational insight that turns the case in the client's favor. And expecting attorneys to arrive at this insight all by themselves moves them away from their core competency as top litigators. Lightening the attorneys' load in this arena increases the overall performance.

Traditionally, it was the smaller firms that had adopted this approach to manage their costs. However, iRunway has seen a dramatic increase in top law firms using this model, at

See **KUMAR** page 20

Law firms involved in the growing technology patent arena are increasingly relying on technical insights to win the case — and this insight is most likely to come when attorneys, experts and specialty technologists work together.

also led legal teams to move away from traditional methods of discovery and fact-finding.

Winning these high stakes patent wars does not require a large infantry. In fact, during the past several years, litigation teams have shifted their approach, choosing to replace a large data-sifting force with a highly trained, "special ops" style SWAT team of technologists

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Courtroom drama

Broadcast quality, inexpensive video are changing litigation dynamics, but not as fast as expected

Tam Harbert

If you want to know the future of courtroom technology, look at today's smartphones. They started with audio and have increasingly incorporated all sorts of other digital technologies, including voice recognition, photography and even high-definition video. Courts have started to integrate technologies, but convergence isn't happening as smoothly as it has on an iPhone. In fact, far from it. Bound by tradition, historically uncomfortable with technology, and by definition slow and deliberative, U.S. courts are adopting technology in fits and starts. It's a painful process as courts try to bend digital recording technology to fit their processes and procedures while realizing that, by its very nature, technology can transform those same processes and procedures.

The impact of digital recording technology on both audio and video is already changing how at least two key players approach their jobs: court reporters and trial attorneys.

When technology is fully capable of recording a trial, will court reporters become extinct? Some trial lawyers say that the emergence of digital audio and video is revolutionizing litigation, and those who can use the technology most effectively may have the upper hand. As technologies mature and become less expensive, these changes will likely accelerate. (Consider

how advances in high-definition streaming have changed how you watch videos on your mobile devices.)

In courtrooms, digital recording technology is mostly audio, but increasingly video has already started to displace court reporters.

"What's driving the expansion of digital audio and video is the desire to save money by not having to pay court reporters," says Fredric Lederer, chancellor professor of law and director of the Center for Legal and Court Technology at William & Mary Law School. "Many courts have abandoned court reporters either entirely or at least in significant part in order to go to either digital audio recording or digital audio/video recording."

Melanie Humphrey-Sonntag, immediate past president of the National Court Reporters Association, says courts are cutting back. Last year the state of Iowa laid off 26 court reporters, and, according to news reports, has considered using digital technology to replace the reporters. Other states are not replacing people when they retire, and so they are moving to digital by way of attrition, she says.

And horror stories abound about transcripts gone missing or so full of errors as to be rendered useless, as chronicled by the Austin *Statesman*, which detailed evasive reporters and criminal cases that had to be retried because of botched transcripts.

A digital recording doesn't automatically produce a transcript. The rules on whether a written transcript is required as the official court record vary depending on whether the court is state or federal, the rules of the particular jurisdiction and the

predilections of the judge. Nor are rules consistent on whether video technology is allowed in courts, although most allow audio technology.

Much confusion exists over the two components of court reporting: the capture of proceedings, and the production of an official transcript. Capturing the record can be done by stenography, audio or video, says Humphrey-Sonntag. The transcription is what makes that record useful. "It is turning that record into something that other people can read, search and synthesize," she says.

Although technology is gaining on the capture part, most courtroom participants acknowledge that it falls down on the transcription part. Transcripts are only required in high-profile cases, such as a murder trial, where an appeal is likely. However, trial attorneys often want a written transcript of the proceedings in order to prepare for the next day. Although the court will supply them with a copy of the digital recording, it's difficult and time-consuming to work with, says Ted Brooks, president of Litigation-Tech. "It's just a .wav file, so you can't easily find where a particular statement was made."

James DeCrescenzo, president of James DeCrescenzo Reporting, says courts are shifting costs of high-quality transcripts to litigants, "by eliminating the official court reporter's role and substituting for him or her with a piece of hardware whether that's digital audio or video. If it's an important case, many times these attorneys will hire their own court reporter, with the permission of the judge, to go in and act as the official reporter for that case."

There are products that use speech rec-

ognition technology to roughly synchronize digital recordings with a written transcript so attorneys can more easily find things, but court reporters argue that the need for a written transcript, particularly if it's needed immediately, will keep them in the courtroom for a long time. "Instant access to the written word is where court reporters really shine," says Humphrey-Sonntag.

Meanwhile, the use of digital video, in particular, has taken off in the deposition market. A large percentage of depositions are videotaped today, says Brooks. The main reason: it can be a very dramatic way of impeaching a witness.

"In any sizable case today, video is being used," says Eric Weitz, an associate at Philadelphia's Messa & Associates who specializes in complex personal injury cases. Weitz videotapes most of his depositions in large cases. There is nothing more effective in destroying credibility, he says, than showing a video in court of the witness giving a different answer during his deposition to the same question he just answered in court.

Weitz also uses video for remote testimony of expert witnesses. In addition to showing testimony, video can also be used to help illustrate and explain complex topics in court. After all, he notes, most jurors are accustomed to consuming information through video.

Using technology to illustrate things isn't new, of course. Seven years ago, during the murder trial of Robert Blake, video illustrations were used to help jurors follow and understand what might otherwise be dry, scientific testimony on evidence such as

See **HARBERT** page 21

Tam Harbert (tam@tamharbert.com) is a freelance reporter based in Washington, D.C. This article originally appeared in *Law Technology News*, a Recorder affiliate.

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THE RESOLUTION EXPERTS



Best courtroom projectors

Tips for finding a model that's compact, lightweight and reliable, with appropriate quality and the right price

John Edwards

A few years ago, digital projectors were rarely seen courtroom presentation accessories. No longer. As prices have fallen, the technology has become more widely adopted. These days, the biggest challenge facing a lawyer searching for a projector is selecting the right model.

As with most other computer products, choosing the best projector boils down to balancing features against needs and cost. An inexpensive, modestly powered projector that works well in a small room may prove inadequate in a larger space. An expensive projector loaded with features may be a needless waste of money if it will be used only occasionally in small rooms. Still, when push comes to shove, it's always better to purchase a projector that slightly exceeds your anticipated needs.

Projector terminology can be confusing. To help cut through the clutter, here are some factors to consider.

Resolution: The number of dots (pixels)

John Edwards (jedwards@gofjohnedwards.com) is a freelance writer based in Arizona. This article originally appeared in *Law Technology News*, a Recorder affiliate.

a projector can shine onto a screen is critical to image quality. Resolution is typically represented by a pair of numbers (e.g., 1280 x 800) representing the number of horizontal and vertical pixels. Because lawyers must often communicate detailed graphics to juries and other observers, it's important to select a high-resolution projector. For this reason, courtroom projectors are often standard WXGA (1280 x 800) or SXGA (1400 x 1050) models. A VGA (640 x 480) or XGA (1024 x 768) output setting might be used in a smaller room or to project less detailed graphics.

Brightness: After resolution, brightness is the most important factor. It's measured in lumens: A higher number indicates a brighter output. A bright projector will help you overcome challenges posed by screen size, screen distance and ambient light. Yet projector power isn't the only key to image brightness. Using a high-quality projection screen rather than a white board or wall will also help create significantly brighter, livelier images.

Display Technology: Most portable projectors are based on either liquid crystal display (LCD) or digital light processing (DLP) technology. Each presents advantages and disadvantages. LCD systems draw less power, generate less heat and provide more stable colors than DLP models, which

offer smoother video and higher contrast. Other display technologies include compact and efficient light emitting diode (LED) systems and liquid crystal on silicon (LCoS) units, which offer high-resolution images, more weight and higher cost.

Portability: The word means different things to different people. Many "pico projectors" are compact enough to fit into a pocket. And there are hefty projectors that, despite claims, are portable in only the most abstract sense.

When push comes to shove, it's always better to purchase a projector that slightly exceeds your anticipated needs.

Size has its benefits, because smaller projectors tend to be less powerful and feature-packed than larger ones. In the end, it's up to you to determine how much portability you really need.

Functions: Projector makers cram a variety of different input, output, enhancement and control functions into products. Here are some key items:

Zoom lens: You'll need a projector with

a zoom lens to enlarge or shrink the image without moving the projector.

Keystone correction: A projector tilted upward or angled to the right or left will produce distorted images. Keystone correction fixes that.

Contrast control: Having the ability to adjust contrast will maximize the visual impact of charts, diagrams, drawings and other types of detailed images.

Interfaces: A good projector is compatible with leading computer and video standards, such as VGA, composite and analog. If you plan to use high definition digital video, look for a projector that includes support for HDMI output.

Price: Bright, high-resolution, feature-rich projectors are usually more expensive than dimmer, low-resolution, bare-bones models. But a projector should never be judged solely on the basis of its price. Narrow your choices to three or four models that provide features and functions you need. Then think about price and quality. Hint: Check out buyer comments on shopping websites to see what users like and dislike.

Complexity: Look for ease-of-use. Controls and interfaces should be logically labeled and arranged. After the purchase, practice using the projector with your other presentation gear.



3M POCKET PROJECTOR MPRO 180

Type: LCOS 1.3 x 5.9 x 2.5 inches; 11.9 ounces

Maximum resolution: 800 x 600

Brightness: 32 lumens

Computer/video: VGA, composite

MSRP: \$435

Upside: Carry it in a briefcase; projects images from your hand

Downside: Extreme portability requires sacrificing output quality and functionality; limited to use in smaller rooms (bit.ly/LTN122x)



EPSON POWERLITE 1880

Type: LCD 4.2 x 13.5 x 10.3 inches, 7.4 pounds

Maximum resolution: 1024x768; HDTV

480i/p, 720p, 1080i, 576i/p

Brightness: 4000 lumens

Computer/video inputs: Analog, VGA, HDMI, USB

MSRP: \$1,399

Upside: Very bright; short throw; moderately portable

Downside: Noisy fan; some users report color balance issues in brightest setting (bit.ly/LTN122j)



OPTOMA NEO-I

Type: DLP 3.1 x 12.8 x 8.9 inches; 2.2 pounds

Maximum resolution: 1280x800; HDTV

702p, 1080i

Brightness: 50 lumens

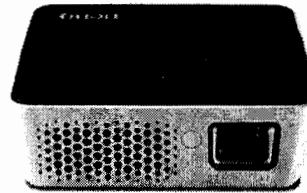
Computer/video inputs: Component,

Composite, HDMI

MSRP: \$799

Upside: Easy to set up and use; iPod dock

Downside: Not as full-featured as other products in its class (bit.ly/LTN122m)



BENQ JOYBEE GP2

Type: LED 2.1 x 4.3 x 5.1 inches, 1.2 pounds

Maximum resolution: 1600x1200; HDTV

480i/p, 576i/p, 720p, 1080i/p

Brightness: 200 lumens

Computer/video inputs: Analog, Com-

posite, HDMI, iPod

MSRP: \$699

Upside: Light and portable; abundant features

Downside: Not bright enough for large spaces (bit.ly/LTN122o)



ACER K11

Type: DLP 1.7x 4.6 x 4.8 inches, 1.34 pounds

Maximum resolution: 1280 x 1024;

HDTV 720p, 1080i/p/60 576i/p

Brightness: 200 lumens

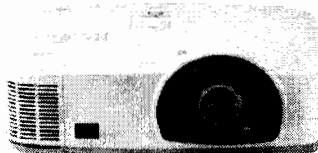
Computer/video inputs: Analog, VGA,

Composite, HDMI

MSRP: \$379

Upside: Plenty of features for not a lot of money

Downside: Not bright enough for large spaces (bit.ly/LTN122e)



NEC NP-M300WS

Type: LCD 5.5 x 15.7x 12.2 inches, 8.8 pounds

Maximum resolution: 1600 x 1220;

HDTV 720p, 1080i/p/60 576i/p.

Brightness: 3000 lumens

Computer/video inputs: Component,

Composite, HDMI, S-Video

MSRP: \$1,099

Upside: Full-featured general purpose portable projector; very bright; short throw

Downside: Fussy manual focus; heavy (bit.ly/LTN122k)



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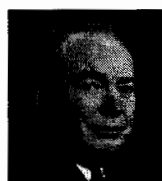
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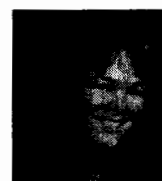
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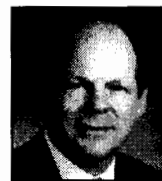
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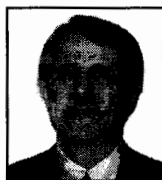
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Gambling on new trial technology

In a high-profile wrongful death trial, two partners bet that an iPad would help persuade the jury

James Moncus III

One week before starting a trial that would become the largest verdict of our careers, my law partner Matt Minner and I were still debating on how best to present our evidence. We had discussed it before, of course, but couldn't quite come to agreement on the best approach to try a politically sensitive wrongful death case involving the tragic death of a young Alabama police officer, Daniel Golden. Our Birmingham-based firm, Hare, Wynn, Newell & Newton, represented Golden's family and his estate in a civil wrongful death suit that followed the criminal adjudication of the case.

We had settled upon our theory of the case and narrowed down the list of documents to be used as trial exhibits. What we lacked was a comprehensive vision for presenting our evidence and our trial story. As with most cases we take to trial, we had predictably narrowed down our technology options for evidence presentation: inData's TrialDirector (with a dedicated IT professional in the courtroom), or a low-tech approach with old-fashioned blow-up foam boards.

In the context of our case, either choice offered advantages and disadvantages. We wanted to give the jurors a sense of intimacy with the evidence, without excessive back-and-forth communication between the lawyers and the IT professional running TrialDirector. Often, there is an intangible but dramatic power and immediacy when a lawyer shows the jury a foam board representing a key document in the case. But just as a little bit of salt perfects a steak, but too much ruins it, too many foam boards can backfire, and we anticipated that we had too many exhibits to easily use and manage foam boards. This clearly favored the use of TrialDirector, which we normally use only in complex medical malpractice trials or product liability cases that typically involve many hundreds — and sometimes many thousands — of documents.

Let's put our dilemma in the context of our case posture. In 2005, Golden was a 27-year-old police officer with the Huntsville, Ala., police department. Huntsville is Alabama's third-most populated city. It is home to NASA's Marshall Space Flight Center and is surrounded by dozens of space,

military and defense contractors, so our jury would be well-educated and tech savvy, and would undoubtedly include at least a few engineers and government contractors.

On a slightly rainy, warm afternoon on Aug. 29, along the outskirts of the city, Golden responded to what he perceived to be a routine domestic disturbance at the Taqueria Jalisco Mexican Restaurant. The 911 call was placed by Laura Castrajon, the wife of the assailant, Benito Albarran. Tapes revealed a frantic young woman worried about her own safety as well as the safety of others. Her husband was drunk and "fighting," she told the 911 operator.

Golden arrived alone and stepped out of his patrol car. From the eyewitness accounts, he hadn't quite taken four steps toward the

From opening statement to closing argument, we were never more than a few steps away from quickly accessing any document in the case, enlarging it for the jury through the projector with a pinch of the iPad's touchscreen, and annotating the document with colored circles, lines or just highlighting portions of text in a long police report.

front door of the restaurant when Albarran, who was hiding along the front of the building, suddenly opened fire. Although struck by Albarran's gunfire, Golden managed to free his Beretta service pistol and fired several shots before it jammed. Albarran, the restaurant's cook and manager, approached the wounded officer, who was seated on the ground and struggling to unjam his weapon, and fired, at point blank range, two fatal bullets into Golden's head.

WHO WAS LIABLE?

On June 19, 2008, Albarran was convicted of capital murder, and subsequently sentenced to death. After that verdict, our firm began to investigate a separate civil case



JASON NOLAN

against the Jalisco Restaurant. Initially, it was clear that the restaurant could not be held vicariously liable for the acts of Albarran due to his intervening criminal act. In other words, the crime was obviously outside of the line and scope of his duties and thus Jalisco could not be held accountable for the employee's criminal actions.

However, further investigation revealed that Albarran was probably intoxicated during the event. Later, we were able to trace back his intoxication to beer provided by the Jalisco restaurant in violation of several Alcohol Beverage Control regulations. Furthermore, we were able to link Alabama's 100-year-old Dram Shop Act (which generally prohibits serving intoxicated individuals) with the restaurant's ABC violations in allowing an employee to consume alcohol. Under these two laws, it would be illegal to allow Albarran, an employee, to drink Jalisco's beer during working hours. Thus, if we could ultimately prove what we believe occurred, Jalisco could be held civilly liable for Officer Golden's death under both the 1909 Dram Shop law and the ABC regulations.

In April of 2011, we began the trial. We structured our trial plan and presentation around these overarching themes, using the ABC regulations and Dram Shop provisions as key demonstrative exhibits. In addition to our live witness testimony, we would need a variety of medical records and films, several police investigation reports and witness statements, the 911 transcript and audio tape, several diagrams and photos, and the ability to play a videotaped deposition. In all, we had more than 45 key trial exhibits,

which we felt would be easily manageable in most any presentation system.

PRESENTING THE EVIDENCE

In view of our focus, and the challenges the case presented, we decided to take an entirely different approach — and turn to an Apple iPad for our trial evidence presentation. We would still use a couple of documents blown up on foam boards, for effect — but we didn't use TrialDirector or bring in an independent IT professional. Everything was managed directly from counsel table with minimal hardware and technology.

Just prior to trial, I purchased all three of the then-available trial presentation apps from iPad's app store — Exhibit A, Evidence and TrialPad. From testing, all three were functional for most purposes, but just before trial I chose one and stuck with it, TrialPad (www.trialpad.com). Cost: \$89.99.

I kept all trial documents loaded on the other two apps as a back-up. To be sure, there were some minor glitches. For example, in testing we discovered that not every app supported each document format needed. Some could not play audio (our 911 tape), or display video (our trial video deposition). But we worked around these idiosyncrasies and displayed all trial content on the iPad.

To do so, we used the native iPad video app to play the trial video deposition with synced transcript and the native iPod app to play the 911 tape, which was converted into an MP3 file. Switching between applications, while perhaps not ideal, was quick and

See **MONCUS** page 20

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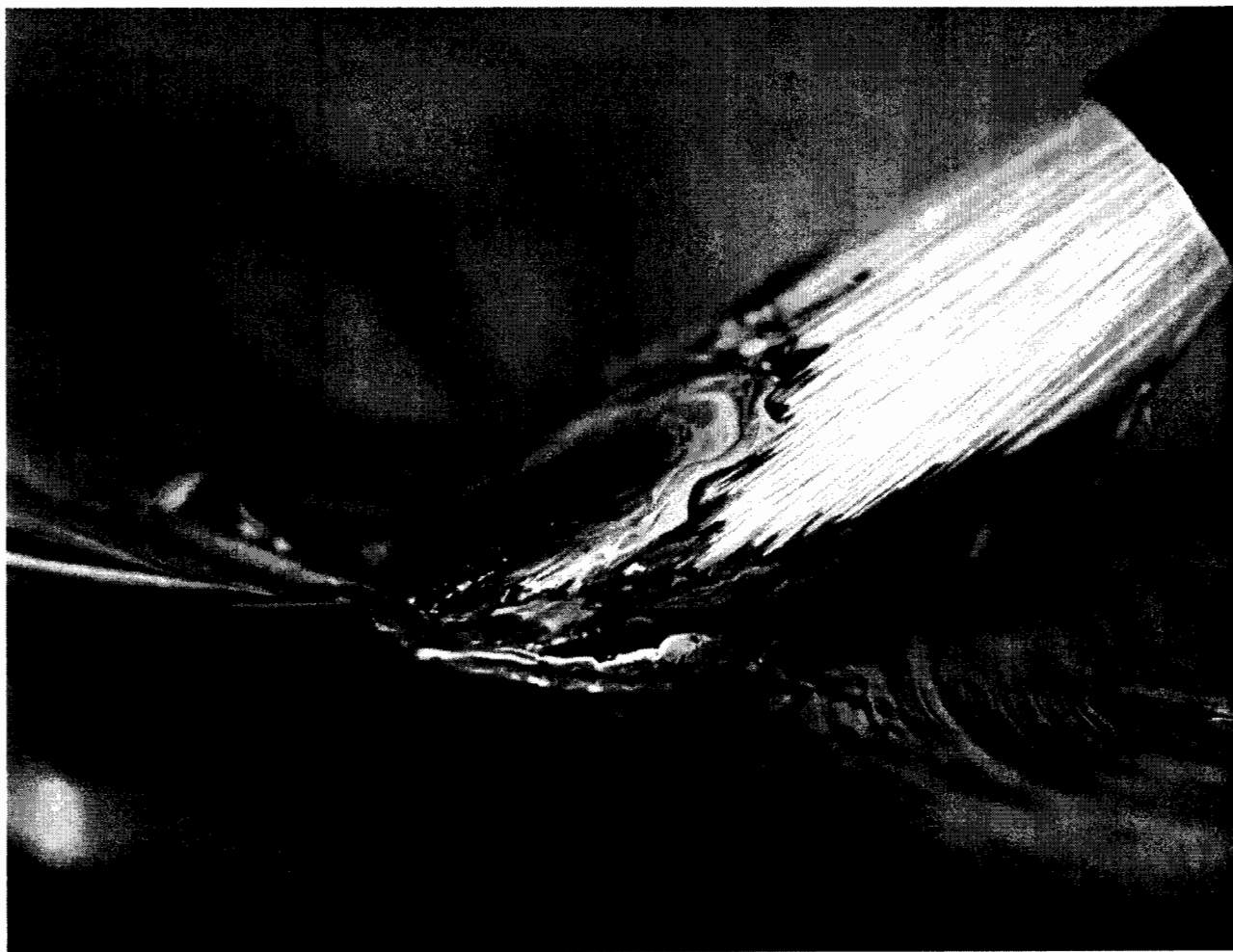


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MONCUS

Continued from page 18

flawless with a double-tap of the iPad's home button.

Highlighting words, phrases or key portions of documents was easily handled on the iPad's touchscreen by simply moving a finger to select the portions of the document that needed emphasis. As with TrialDirector, this can be accomplished in real time as the lawyer or witness is reading the document aloud.

From opening statement to closing argument, we were never more than a few steps away from quickly accessing any document in the case, enlarging it for the jury through the projector with a pinch of the iPad's touchscreen, and annotating the document with colored circles, lines or just highlighting portions of text in a long police report.

We brought our own regular computer speakers to the courtroom, with a compact auditorium-style speaker as a backup. We also used our own portable large screen for the jury — it was positioned in such a way so that it was also visible to witnesses and the trial judge. (If the courtroom had been equipped with monitors for the jurors, witnesses and the judge, we would have plugged in to that existing system.)

With a long VGA cord and adapter connected to the projector, we could walk with the iPad as we moved about the courtroom, or rest the device on a gallery rail while examining a witness. For the times when audio or video was played, a small audio cord ran from the iPad's audio output to the speaker.

TIMING IS EVERYTHING

The iPad's 10-hour battery life meant we never had to worry about crashing — but we were very careful to start each day with a full charge, as the iPad will not support charging while in display mode, due to its single dock

connector port.

Another feature that became vital during witness examinations was the iPad's ability, like TrialDirector, to process mark-ups and highlights on documents. We could "time" our delivery of images, because the iPad allows users to enlarge portions of documents without the image feeding to the projector until the "active" indicator is pressed. This meant one of us could sit at counsel table readying a document for impeachment while the other lawyer examined the witness.

Similarly, TrialPad could mark "hot docs" as well as help us organize documents into separate folders — so we could create folders for opening, closing and each witness. As new documents and demonstrative aids were needed, we used Dropbox, a web-based document storage and transfer system. With it, our colleagues at the office could transfer documents directly to our iPad trial app, ready for use.

One moment where the device's brilliance became apparent came when we were examining a witness about the alleged signature of Albarran on a beverage receipt signed the day of the shooting. The restaurant took the position that he was not an employee nor was there any evidence he working that day. With the pinch and zoom feature of the iPad's touchscreen, what was almost an illegible faded receipt showing an obscure signature became "exhibit one" in our case for establishing Albarran's employment — and presence at the scene on the day of the crime.

On April 19, 2011, the jury returned a verdict in favor of Golden's family in the amount of \$37.5 million, assessing damages of \$25 million against Albarran as well as \$12.5 million against the Jalisco restaurant. No appeal was filed and the time for appeal has expired.

SMITH

Continued from page 13

hyperlink all of your case documents for easier reading and sharing. Typically, e-briefs are created as PDFs. An e-brief created for and displayed through an iPad, however, has numerous advantages over a simple PDF brief. E-briefs for the iPad can incorporate photographs, videos and best yet, 3D-modeled images that you can rotate 360 degrees with your finger by swiping the image. This presentation format has great potential for mediation and trial, as it allows you to project the brief on a screen for use as an interactive PowerPoint type of presentation. To learn more and download a sample iPad e-brief for viewing, go to cogentlegal.com/blog and search for "e-briefs" to find the downloadable link and instructions.

If you're looking for a more traditional method of presenting a case, either in mediation or trial, the iPad offers many different ways in which to do that as well. My all-time favorite is Keynote, which works in a linear presentation format like PowerPoint, but frankly works much better than PowerPoint. Keynote can be installed on both a desktop computer or in a version available on the iPad itself, both of which can be used to create and modify all the slides. While I like to create the Keynotes on a desktop Mac, if you do not have one, you have all the same functionality right on your iPad. The program has templates to start with, allows easy import of photos and video, adding drop shadows and drawing basic shapes.

For those of you who are determined to stick with PowerPoint rather than transitioning to Apple's Keynote, there are options as well. Slideshare is a free app from the iTunes store that allows you to set up an account online and upload your PowerPoint to the site, where it is made into an iPad-friendly format for viewing. Unfortunately, videos do not work on it, but it does a very good job with most everything else. It's extremely useful if you already have a PowerPoint made and simply want to show it on an iPad.

Another option for PowerPoint presentations with the iPad is an app called OnLive, which allows you to create and modify PowerPoints, Word documents and Excel sheets right on your iPad. With the premium version, you get access to Dropbox.com so you can bring up any of these files right on your iPad.

ADDITIONAL EQUIPMENT FOR PRESENTATIONS

Once you create your Keynote or e-brief, you have a few choices of how to present it. The easiest way is to buy an adapter for the iPad that costs about \$25 and has either an HDMI or a VGA output. Most modern projectors accept HDMI, which allows sound through the same cable as the video feed. I

have the Epson 1775W Multimedia Projector (costs around \$1000), which is a nice, easily portable choice, but many other projectors on the market work well, too, some for half the price if you don't care about widescreen or wireless.

Then, using the adapter, you simply hardwire your iPad to the projector; when you start the Keynote presentation, the iPad recognizes that it has an external display attached. You will see the presenter screen on your iPad, which indicates the current slide, the next slide up and any notes you have added, but the audience sees only the current screen projected. It's quite easy and pretty foolproof.

If you want a setup that allows you to freely roam the room and not be tethered to your projector, there's another way to go. If you purchase an Apple TV device (\$99), and both your iPad and Apple TV (generation two or later) are connected to the same Wi-Fi signal, then you can use the Air Play function to wirelessly connect to the Apple TV. (The Apple TV device is connected by an HDMI cable to your laptop.) This setup will allow you to hold your iPad anywhere in the room within the Wi-Fi signal and control the presentation. It's by far the best way to go, but a bit more technically complicated.

At last year's American Board of Trial Advocates Masters in Trial MCLE event, I prepared the opening statement graphics for the plaintiffs in a Keynote presentation that was controlled wirelessly from an iPad held by my former law partner, Robert Arns. Judge Jon Tigar of Alameda County Superior Court praised the use of the seamless technology with a powerful oral presentation and said both enhanced each other. It just goes to show that when done well, this technology can really help attorneys present their cases and connect with the judge and jury.

One potential problem with the remote setup describe above is that you cannot necessarily rely on the location where you're presenting — such as a courtroom or mediator's office — to have Wi-Fi you can access for the presentation. For this reason, I also recommend getting an Apple Airport Extreme that creates a Wi-Fi spot wherever you plug it in. If you set this up beforehand, then both your iPad and Apple TV will find and connect to it as soon as you plug it in, and it provides the Wi-Fi connection.

There's no question the iPad is becoming a much more useful tool for case presentations and should be considered by any attorney for use at mediations or in court. I had the chance recently to test out an iPad presentation in one of the "tech ready" federal courtrooms in San Francisco, and I'm happy to report that with a simple VGA adapter, my iPad plugged right into the system and worked with no fuss. If you can use the iPad that easily in federal court, you can use it anywhere.

KUMAR

Continued from page 14

times bypassing the standard document review process, to deliver the best possible outcome for the clients at lower costs — sometimes as much as 50 percent cost savings. These firms realized that specialists provide a deep understanding of technology that helps them build powerful and successful arguments in court.


These specialists have proven their mettle in many instances, helping the lawyers realistically and efficiently assess the strengths and weaknesses in a case from the perspective of the alleged product and the code in question. They do this by speeding the evidence-gathering process, increasing the depth of the evidence, and improving the quality of the final argument by laying the groundwork for the expert to put together the final report.

Attorneys always lead the effort, managing









the legal process, and more importantly, the case strategy, while technology specialists navigate the seemingly endless swamp of code and find the important elements. They are able to do this effectively because they understand what is critical and noncritical in relation to the specific code and the greater world of technology.

Working with a SWAT team of technology specialists provides the much-needed leverage to the expert and enables attorneys to better manage the process, increase efficiency and, ultimately, succeed.

What can dramatically alter the course of technology litigation is that "secret sauce" of high-end technology competency. It is not the process that matters so much as the "eureka" moment in a litigation that unearths powerful evidence. Technology insights that can lead to a positive business outcome is a new kind of intellectual arbitrage, and one that will play a crucial role in litigation in the near and long term.



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HARBERT

Continued from page 15

gunpowder residue, says M. Gerald Schwartzbach, the Mill Valley attorney who successfully defended Blake. "The scientific testimony can be really boring," he says. "But if you intersperse this type of technology in with it, at least it keeps the jurors awake."

But substantial barriers remain to using video in the courtroom. First, although costs have come down, it's still expensive. And the use of elaborate, broadcast-quality video can raise the issue of whether wealthy clients with tech-savvy lawyers get more effective representation.

More important, there is significant resistance by judges and court officials. Judges, after all, are responsible for the smooth operations of their courts and often do not want to complicate things by introducing technology, particularly if it's unreliable.

And recordings can backfire. Ron Hedges, who served as a federal magistrate judge from 1986 to 2007, once had the audio recording system fail and had to "redo" the proceeding. "At the second hearing I was satisfied that a witness perjured herself by changing her testimony," he says, "at which point I recused myself and asked the U.S. attorney to prosecute."

The physical layout of the court can be a barrier. Most courts weren't built to accommodate technology, so often there are no electrical outlets, or not enough in the right places. Some venues cannot accommodate big screens. Even when courts are modernized, technology can create subtle problems for litigators. Some courts have installed individual screens for each juror in the jury box, Weitz says. "So now I've got a jury looking down at a screen in front of them rather than watching witnesses, and reactions, and one common image."

The rules of civil procedure and discovery, while they are beginning to adjust to

technology, aren't evolving nearly as fast, says Weitz. For example, in personal injury cases, video may create prejudice. "In a nursing home case you may historically have shown a photo of a terrible ulcer caused by improper care of grandma," he explains. "Now, you could put up a high-def picture, blow it up to the size of Alaska on a screen in front of everybody. It's gruesome. It's inflammatory."

Even the placement of microphones and cameras disrupt tried and true techniques, says DeCrescenzo. Attorneys like to stand in particular places, such as at the end of the jury box because they want the witness to turn to talk directly to the jury. But there may be no microphone or camera at the end of the jury box. "So something they've learned to do over the years — now they can't do it," he says.

But in the end, new technologies are going to change the courts — it's just a matter of time.

VENDORS AND PRODUCTS

Barkley Trial Technologies, a division of Barkley Court Reporters, offers presentation and video services.

ForTheRecord provides digital and video products.

Jefferson Audio Video Solutions specializes in courtroom recording systems.

Norab Systems offers speech recognition systems that can be used to sync written real-time transcripts to video.

Trial Technologies delivers a variety of trial presentation services, including HD Superdepositions.

VIQ Solutions offers digital audio and video capture and management for courts and law enforcement.

Visionary Legal Technologies offers voice recognition to sync written transcripts to audio and video recordings. A new product line creates a rough real-time transcript while videotaping.

West LiveNote is real-time transcript and evidence management software.

GOOGACLE

Continued from page 1

CEO Scott McNealy. There was even a brief appearance by Oracle President and CFO Safra Catz, named one of the highest-paid and most-powerful women in business.

"Will Mr. Ellison be returning to testify about the claim limitations?" U.S. District Judge William Alsup asked, at least half in jest.

Probably not, said Oracle counsel Michael Jacobs of Morrison & Foerster. Instead, his team plans to call techies from Google as adverse witnesses, as well as its technical expert.

The lawyers are still fighting over whether Oracle will be able to again put on Google engineer Tim Lindholm. He's the man behind Oracle's key piece of evidence: an email in which Lindholm seemed to say Google needed to license the Java technology now in dispute in the case.

"They want to be bring Mr. Lindholm back on a rather far-fetched theory," Van Nest said, referring to Lindholm's time at Sun. "They want to parade him around as having prior knowledge."

Oracle has made its own motion to stop Schwartz, the head of Sun when it was acquired by Oracle, from testifying about whether Sun made any decision to sue Google over Android while he was in charge of Sun.

When Schwartz was on the stand during the copyright phase, Van Nest asked him if there was "a decision not to pursue litigation against Google over Android?"

Schwartz: "Yes. We didn't feel we had any grounds."

In papers filed late Thursday, Boies, Schiller & Flexner partner Steven Holtzman said that kind of testimony would be impermissible for several reasons, including that it's "simply untrue, to the extent that it is offered to suggest that Sun, the company, had made

an affirmative decision not to sue Google over Android."

Google hadn't yet responded at press time.

Alsup asked the attorneys if they could work out a deal where "peripheral" witnesses like Schwartz and Lindholm weren't called.

On Friday afternoon, the jury indicated it had reached unanimous decisions on all but one of the four copyright questions. Instead of receiving a partial verdict, Alsup asked them to continue deliberating today on the unresolved question.

"We'll try to do it," Van Nest offered.

The patent portion of the trifurcated trial will begin as soon as the jury delivers its verdict. And that could be as soon as today.

On Friday afternoon, the fourth full day of deliberations, the jury indicated it had reached unanimous decisions on all but one of the four copyright questions. Instead of receiving a partial verdict, Alsup asked them to continue deliberating today on the unresolved question.

The patent portion of the trial is expected to take as little as a week, lawyers estimated. Only two patents are in dispute, and Google is no longer asserting an invalidity defense. Each side will get 45 minutes for openings.

SAN JOSE

Continued from page 1

open the seat for which Colin is running. Last month, Brock told *The Recorder* that he had written a letter of recommendation for Colin's appointment application, and said he has a personal interest in someone "good" replacing him. Colin says he has a "reputation for fairness," pointing to a matter where he declined to institutionalize a convicted sexual predator whom doctors said had been rehabilitated, despite having a legal avenue for pursuing the case.

Colin, whose first career was in business at Xerox Corp. and high-tech startups on the East Coast, has also done the most fundraising in his race — he's collected \$26,000, including a \$2,500 loan, according to his most recent campaign finance filing, which tracks donations through mid-March.

One of Colin's opponents, though, says seeking endorsements can get awkward when one is too well-known to the local bench. Alexis Cerul, 46, a staff research attorney with the Santa Clara court, said his close professional ties have prevented him from seeking or getting the same number of endorsements as Colin.

"I'm not going to trade on my friendships or my professional relationships" to get endorsements, he said. "That's working against me, and there's nothing I can do about it." Cerul also hasn't collected contributions, he says, except for \$4,500 he loaned himself, and \$500 he says his parents insisted on sending.

Instead, Cerul says he has the best ties to the non-legal community — he and his wife, a fourth-generation San Jose resident,

live blocks from numerous members of their large extended family and the Mexican restaurant the family started some 50 years ago. He's also been endorsed by several labor groups, including the local chapter of the Service Employees International Union. When addressing the unions, Cerul says, he tells them his experience as a staff research attorney has been like an apprenticeship — and now he's ready to be a journeyman.

"You're entitled to have a judge who is like you and who would do what you would do," said Cerul, adding that his "regular guy" identity would provide much-needed socioeconomic diversity to the bench. Cerul points out that opponents Colin and Christopher Cobey, an employment law defense special counsel at Littler Mendelson, earn more than he does.

But Cobey, 63, says his litigation and courtroom experience is his calling card in this race.

"I have been a lawyer for longer than both of my opponents combined," he said, adding that he's running because a judgeship is an opportunity to "change from being an advocate to being a person who can do what he or she thinks is right."

Cobey joined Littler in 1993. Prior to that he worked as a deputy district attorney and ran for the state Legislature in 1978. Politics is of particular interest to Cobey, who counts psephology, or the study of election returns, as one of his hobbies. According to campaign finance filings, Cobey has raised just over \$11,000, \$6,000 of which he loaned to himself. Cobey, like Colin, has significant numbers of endorsements from judges, but many of them sit or sat in other jurisdictions or federal court. Cobey says this reflects his practice, as he has ap-

peared in many courts. He is also the only candidate who doesn't live in Santa Clara County — he and his wife reside in Redwood City.

THE OTHER RACE

Just two candidates — Sevely and Steven Pogue — are in the running to fill the seat vacated by Neal Cabrinha. Pogue, 57, maintains a general practice on the San Jose and Milpitas border and has a shorter list of endorsements than Sevely. But he says his connections with past and current clients are significant to his campaign. His client base includes many Spanish- and Vietnamese-speakers, as well as Filipinos. He says during previous election seasons he's gotten dozens of phone calls from clients who want to know how to vote for judge.

"I deal with issues that arise between everyday people," said Pogue, who is fluent in Spanish and speaks it in the home he shares with his family of seven children. Pogue, who attended Lincoln Law School at night and graduated when he was 38, also counts his wide variety of experience — from felony jury trials to probate and family law matters — as a major plus. Most sitting judges have "only done one thing" prior to their judicial careers, and most of the time that prior work is in criminal prosecution, he said. His candidacy, he said, is an alternative to that.

"In terms of understanding the criminal courts, yeah, [Sevely's] probably got me, but I've got the wide breadth of experience," he said. According to campaign finance forms, Pogue has only received \$450 in donations, but he's loaned his campaign \$5,000.

Sevely, the daughter of a JAG Corps at-

torney who has spent most of her career in the Santa Clara DA's office, said she doesn't think Pogue's broader experience will hurt her on election day, pointing to her long list of endorsements. As of mid-March, Sevely had raised \$5,000. Like Colin, she touts her reputation for good decision making.

"A prosecutor is always interested in fairness, and that's why I became a prosecutor," she said. In particular, Sevely said she is interested in protecting the rights of *pro per* litigants — who she says often feel pressure to plead guilty so that they won't miss work — and working with public defenders to recognize when litigants are struggling to make hearings due to logistical challenges like relying on the bus or not having access to a phone.

"I like to fix problems," she said, adding that in her time at the DA's office she has often been charged with big firsts, such as cleaning up backlogs in special projects and running the AIDS litigation unit in its infancy.

When new assignments come along, she said, "I don't shy away from it." Sevely also currently manages the intern program in the office, and says helping young volunteers is of particular interest to her — an interest she'd like to bring over to the court, perhaps pioneering a more extensive intern program there.

"I want these kids to be successful," she said. "I want them to learn about ethics, and standards, and that if you don't have your reputation you have nothing."

The election is scheduled for June 5. In the three-person race, if Colin, Cerul or Cobey don't get a majority of the votes, the top two finishers will face each other in a November run-off.

Vermont Bar Association - Cloud Opinion

Monday, December 31 2012, 12:29 PM

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2011 Advisory Ethics Opinions

Communication with Unrepresented Party

OPINION # 2011-5

Synopsis: An attorney representing parties being sued by a non-profit condominium association that is governed by a board of directors elected by the membership may communicate directly with non-board members of the association regarding facts relevant to the litigation without notifying the board's attorney and without first obtaining the board's attorney's consent.

Facts: A Vermont non-profit condominium association governed by a board of directors elected by the membership has brought suit against multiple defendants, including the developers of the condominium, for a series of alleged construction defects. The suit is being pursued by the Board of Directors on behalf of the Association. The Board of Directors is authorized to act on behalf of the Association. This is true even if individual members disagree. The Board has retained counsel to represent it in the litigation. Counsel for the association has confirmed that counsel does not represent the individual owners, but the association counsel asserts that by representing the association he is *de facto* representing the owners as members of the association because the association is acting in what the association board of directors believes to be in the interests of the member owners. As such, the association's attorney takes the position that his representation extends to the member owners for purposes of the application of the anti-contact provisions of V.R.P.C. 4.2. Requesting attorney asks whether requesting attorney is required to seek the consent of the association counsel before contacting non-board members of the association to discuss issues relevant

to the lawsuit.

Question: Is the attorney for the defendants permitted to communicate with non-board members of the association without first obtaining the consent of the association's attorney without violating Rule 4.2 of the Vermont Rules of Professional Conduct.

Analysis: Rule 4.2 states as follows:

Communication with Person Represented by Counsel

In representing a client, a lawyer shall not communicate about the subject of the representation with a *person* the lawyer knows to be *represented by another lawyer in the matter*, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order. (emphasis added).

The issue raised by the opinion request is whether the non-board members of the association are persons represented by the association's lawyer within the meaning of Rule 4.2. If so, then Rule 4.2 prohibits the defendant's attorney from communicating with such persons without the association lawyer's consent. If not, then Rule 4.2 does not prohibit direct communication between the defendant's attorney and the non-board association members.

When an organization is represented by counsel, Rule 4.2 prohibits the attorney for an adverse party from communicating directly with a constituent of the organization, if (1) the constituent supervises, directs or regularly consults with the organization's lawyer concerning the matter in litigation, or (2) the constituent has the authority to obligate the organization with respect to the matter in litigation, or (3) the constituent's act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability. Rule 4.2, Comment 7.

The association acts through its board of directors. The board of directors gives guidance to the association's lawyer and makes decisions about the litigation. Non-board members are in a totally different category. Non-board members interests may align fully with the association's interests, but non-board members do not satisfy any of the three categories set forth above as guides to when a constituent is deemed to be within the scope of the prohibition of the Rule.

A test for the applicability of the anti-contact rule used in some cases is known as the "managing-speaking" test. That test prohibits communications with any person who is a manager who is authorized to speak for the corporation. *Palmer v. Pioneer & Associates*, 257 F.3rd 999 (9th Cir. 2001) (employees holding managerial positions which give them authority to speak for and bind a corporation may not be contacted by the opposing party's attorney). Applying that test here, the non-board members would not be deemed to be covered by the anti-contact provisions of Rule 4.2 because such members do not meet the managing-speaking test.

Additional guidance with respect to the scope of Rule 4.2 is obtained by reference to the attorney corporate client privilege set forth in 12 V.S.A. §1613. That statute is entitled "Lawyer-Corporate Client Privilege." The statute applies only to for-profit business corporations, but a review of its provisions is instructive because the protective purposes of the statutory evidentiary privilege is similar to, though not identical to, the protective purpose of the Rule.

The statute states that communications between an attorney and a corporate employee are privileged if (1) the employee is a member of the control group of the corporation, acting in the employee's official capacity, or (2) if the communications with a corporate employee are necessary to effectuate legal representation of the corporation. This two-prong standard incorporates but expands upon the "control group" standard for determining the scope of the attorney client privilege in the corporate setting.

The statute defines the control group as including (1) the officers and directors of a corporation and (2) persons within the corporation with authority to control or "substantially participate" in a decision regarding action to be taken on the advice of a lawyer, and persons who have the authority to obtain legal advice for the corporation or to act on advice rendered. Thus, under the statutory definition, officers and directors of a corporation are, by definition, part of the control group and thus within the scope of the privilege, and others who have authority to act on the advice of corporate counsel are also included.

In response to the statutory enactment, the Supreme Court amended V.R.E. 502 regarding the scope of the lawyer client privilege. The court added a definition for a "representative of the client." VRE 502(a)(2). The phraseology adopted by the court differs from the phraseology of the statute, but the Reporter's Notes make clear that the scope of the evidentiary privilege under the Rule is intended to be seen as the same as the scope of the statutory privilege. V.R.E. 502(a)(2) defines a "representative of a client" as (1) a person having authority to obtain legal services or act on legal advice on behalf of the client, and (2) a person who, while acting within the scope of employment, makes or receives confidential communications necessary to effectuate legal representation for the client. In the case of a corporation, the officers and directors and those having authority to control or substantially participate in decisions responsive to the advice of a lawyer are also deemed to be representatives of the client.

If Rule 4.2 were deemed to be co-extensive with the evidentiary privilege, the non-board members would still not be within the Rule because they do not satisfy the evidentiary privilege definition of a representative client.

Court decisions have noted a distinction between the scope of the attorney client privilege and the scope of the anti-contact provisions of Rule 4.2. Courts have observed that the attorney client privilege is broader in scope than the anti-contact rule. Persons who are "clients" within the scope of the attorney client privilege in a corporate setting may not be "represented parties" for purposes of the anti-contact rule. *Wright v. Group Health Hospital*, 691 P2d 564 (Wash. 1984). (a corporate employee who is an "employee" under the attorney client privilege is not necessarily a "party" for purposes of the disciplinary rule).

The relationship here between an association member and the association is admittedly distinguishable from the relationship between an employee and a corporation; but that difference does not change the analysis. The same test applies to both types of relationships for purposes of determining scope of representation and for deciding whether a person is a represented person within the meaning of Rule 4.2.

There is no indication in the language of Rule 4.2 or in the many cases interpreting it, that the

scope of coverage should be different for members of an association than for employees of a corporation. A California court has squarely rejected the assertion that members of a homeowners association are deemed to be clients of the association's counsel for purposes of applying the protections of the attorney client privilege. *Smith v Laguna Sur Villas Cmty Ass'n*, 79 Cal. App. 4th 639 (2000) (homeowners of represented association held not to be clients of the association's attorney and, thus, not entitled to attorney client information developed in litigation). It is clear from the facts presented by requesting attorney that non-board members of the association have no direct role in the conduct of the litigation and have no authority to speak for or act on behalf of the association with respect to the matter in litigation.

Rule 4.2 is intended to strike a balance that preserves the integrity of the lawyer client relationship for matters in litigation by ensuring that persons represented by counsel may not be contacted directly by opposing counsel; but the Rule is not intended to create a blanket prohibition against contact by opposing counsel that would extend beyond persons actually represented by counsel. In the case of an organization, such represented persons include representatives of the organization who meet the tests described above in this analysis. Non-board members do not meet those tests.

A competing interest to the restriction imposed by Rule 4.2 is the goal that each party have access to information relevant to the matter in dispute and that each party be able to independently investigate facts important to preparation of the case. Attempts to use Rule 4.2 as a blanket shield to block opposing counsel from gaining access to persons associated with an organization are generally rejected as over broad. *Terra International, Inc. v. Mississippi Chemical Corp.*, 913 F. Supp. 1306 (W.D. Ia. 1996) (claim that all employees were represented by corporate counsel by virtue of their employment rejected as over broad); *Carter Herman v. City of Philadelphia*, 897 F. Supp. 899 (E.D. Penn. 1995) (court rejects assertion that every employee of defendant city is deemed within the scope of representation by virtue of employment). The court in *Carter Herman* observed that if the broad scope of representation claimed by the city were accepted,

An organization could thwart the purpose of Rule 4.2 simply by unilaterally pronouncing its representation of all its employees.

The court in *Terra* observed that

an employer cannot unilaterally create or impose representation of an employee by corporate counsel. Such a "automatic representation" rule would serve no universal purpose, but would instead impede the course of investigation leading to or following the filing of a lawsuit.

Requesting attorney has provided additional information about the role and status of non-board members. Non-board members of the association do not supervise or direct the association's lawyer, nor do they regularly consult with the association's lawyer regarding the litigation. Non-board members of the association have no authority to obligate the association, direct the lawsuit, enter into settlements, respond to discovery, or act in any way on behalf of the association with respect to the litigation.

Under these facts, Rule 4.2 does not bar defendant's counsel from contacting non-board members of the association and discussing with non-board members issues relative to the matters in

litigation directly and without the consent of the association's counsel.

We would note two further observations. First, we would remind requesting counsel of the provisions of Rule 4.3 entitled, "Dealing with Unrepresented Person." That Rule imposes obligations on an attorney who is dealing with an unrepresented person to ensure that the person understands the lawyer's role in the matter and cautions that an attorney must give no legal advice to an unrepresented person other than the advice to secure legal counsel. Given that non-board members have ownership interests in the association and may be affected directly by the litigation, requesting attorney must take all necessary precautions to ensure that a non-board member understands the attorney's position in the pending litigation.

Second, requesting attorney could seek clarification from the court as was done in *Baisley v. Missisquoi Cemetery Assn.*, 167 Vt. 473 (1998), but a majority of the committee does not believe that such a request is necessary under the facts presented here.

Conclusion: Requesting attorney may contact non-board members of a condominium association without the knowledge or consent of the association's lawyer.

OPINION 2010-6

DIGEST:

Vermont attorneys can utilize Software as a Service in connection with confidential client information, property, and communications, including for storage, processing, transmission, and calendaring of such materials, as long as they take reasonable precautions to protect the confidentiality of and to ensure access to these materials.

QUESTIONS PRESENTED

The Vermont Bar Association Professional Responsibility Section has been asked to address the propriety of use by attorneys and law firms of Software as a Service ("SaaS") which is also known as Cloud Computing. Subsidiary questions include whether client documents and information can be remotely stored and backed up using SaaS systems; whether there is any subset of client property that cannot be stored using SaaS; whether lawyers can use SaaS and web-based email and calendaring systems; and whether use of remote document synchronization systems is permissible.

RELEVANT RULES

Rule 1.6. Confidentiality of Information

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent

Comments to Rule 1.6: Acting Competently to Preserve Confidentiality

[16] A lawyer must act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision.

[17] When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this rule.

Rule 1.1. Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Rule 1.15. Safekeeping Property

(a)(1) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. . . . [Client] property shall be identified as such and appropriately safeguarded.

Rule 5.3. Responsibilities Regarding Nonlawyer Assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect

measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer . . .

DISCUSSION

SaaS and Cloud Computing refer to a constellation of web-based data processing, transmission, and storage services that are available over the internet. In the past, client property was handled and stored on site, and lawyer-client communications occurred in person. Technological advances, however, have changed the way data is transmitted and stored, and the ways lawyers communicate with clients. These changes in technology have been accompanied by new questions about how lawyers should act to protect confidentiality of client information.

The propriety of lawyers using SaaS has attracted significant attention from Bar Association Ethics Committees in recent years, and a consensus position has been developing that allows lawyers to store client data in web based systems, and about the steps lawyers should consider and take when engaging in Cloud Computing. This opinion therefore now turns to a summary of recent ethics decisions addressing SaaS.

North Carolina Proposed Formal Ethics Opinion No. 6

Over a period spanning approximately 1½ years, the North Carolina State Bar Association has issued successive drafts of a formal ethics opinion addressing attorney use of SaaS. The third draft of this Formal Ethics Opinion, issued in October 2011, endorses the use of SaaS to store law firm data, including confidential client information, as long as steps are taken to protect the confidentiality of client information and to preserve client property. Proposed NC FEO 6 steps back from a series of mandatory steps that lawyers would have been required to take in connection with use of SaaS, as set forth in the previous April 2011 draft of this Opinion. Instead, the Opinion now provides that lawyers:

“may use SaaS if reasonable care is taken to minimize the risks of inadvertent disclosure of confidential information and to protect the security of client information and client files. A lawyer must fulfill the duties to protect client information and to safeguard client files by applying the same diligence and competency to manage the risks of SaaS that the lawyer is required to apply when representing clients.”

Because of the rapidly changing nature of technology, Proposed NC FEO 6 declines to impose specific requirements on lawyers who use Cloud Computing in connection with client data. Instead, the Opinion identifies a series of steps that lawyers should consider taking before using SaaS, and requires lawyers to engage in ongoing due diligence and continuing legal education to ensure that remotely stored client data remains secure and accessible. Factors identified in this Opinion for those who use SaaS include:

- a. Understanding and protecting against security risks inherent in the internet, including end-user vulnerabilities in the lawyer's office;
- b. Including provisions about protection of client confidences in the agreement between the lawyer and the SaaS vendor;
- c. Ensuring that there are mechanisms for obtaining access to, retrieving, and protecting data if the lawyer terminates use of the SaaS product, or if the SaaS vendor goes out of business or experiences a break in continuity;
- d. Carefully reviewing the terms of the user agreement, including its security provisions;
- e. Evaluating the security measures used by the vendor; and
- f. Confirming the extent to which the SaaS vendor backs up the data it is storing.

Iowa State Bar Association Ethics & Practice Committee Opinion 11-01

In September 2011, the Iowa State Bar Ethics and Practice Committee took a similar approach to Cloud Computing in Opinion 11-01. Applying comment 17 to Rule 1.6, Opinion

11-01 recognized that:

“the degree of protection to be afforded client information varies with the client, matter and information involved. But it places on the lawyer the obligation to perform due diligence to assess the degree of protection that will be needed and to act accordingly.”

The Opinion declines to address in detail the specifics of individual SaaS products, because such guidance would quickly prove outdated, and may be beyond the scope of a lawyer's expertise. Instead, Opinion 11-01 suggests a series of matters into which lawyers should inquire before storing client data on remote servers they do not control, including:

- a. Availability of unrestricted access to the data, and ability to access the data through alternate

means;

- b. Performance of due diligence about the SaaS vendor, including its operating record, recommendations by other users, the provider's operating location, its end user agreement (including provisions on choice of law, limitations on liability and damages, and rights in the stored data);
- c. Financial arrangements, including access to data in case of nonpayment or default;
- d. Arrangements upon termination of relationship with SaaS provider, including access to data; and
- e. Nature of confidentiality protections, including password protection and availability of different levels of encryption.

The Opinion further notes that lawyers may be able to discharge their responsibilities by relying on due diligence efforts by non-lawyer personnel with expertise in these areas.

Pennsylvania Bar Association Formal Opinion 2011-200

In its recent Formal Opinion 2011-200, the Pennsylvania Bar Association Committee on Legal Ethics and Professional Responsibility similarly concluded that attorneys can use cloud computing if stored materials remain confidential, and reasonable steps are taken to protect stored data from risks including security breaches and loss of data. This Pennsylvania Opinion recommends various steps the lawyer should explore with the SaaS vendor, including:

- a. the existence of an obligation imposed on the vendor to preserve security;
- b. a mechanism for the vendor to notify the lawyer if a third party requests access to the stored information;
- c. the existence of systems that are sufficient to protect the data from unauthorized access;
- d. an agreement about how confidential client information will be protected;
- e. the ability to review the vendor's security systems; and
- f. tools to protect the lawyer's ability to access and retrieve the data.

California Bar Professional Responsibility and Conduct Committee Formal Op. 2010-179

Recognizing that a technology-specific opinion "would likely become obsolete shortly," California Bar Ethics Opinion 2010-179 similarly endorses Cloud Computing, and then provides a general analysis of the considerations a lawyer should evaluate when using SaaS, including:

- a. The ability of the lawyer to assess the security provided by the provider, including the specifics of the technology, whether specific precautions can be used to increase the level of security, and limits on who is permitted to monitor use of the software, evaluated by someone who possesses a sufficient level of competence to address these issues;
- b. Availability of legal consequences for improper interception of or access to the data;
- c. Degree of sensitivity of the information being stored
- d. Potential impact of unauthorized disclosure on the client;
- e. Urgency of the situation; and
- f. Client circumstances and instructions.

New York State Bar Professional Ethics Committee Opinion 842

In September 2010, the New York State Bar Professional Ethics Committee issued a similar opinion, adopting a reasonableness standard and discussing the following factors that a lawyer should consider when storing client information in the cloud:

- a. Confirming that the SaaS vendor has a enforceable duty to maintain security and confidentiality, including prompt notification of the attorney upon service of process requiring disclosure of the data;
- b. Investigating the provider's security procedures, policies, and methods for recovering data;
- c. Guarding against infiltration attempts using available technology;
- d. Determining whether the vendor can transfer and then permanently delete the data if the lawyer changes providers;
- e. Periodically reconfirming that security and access measures remain sufficient as technologies change; and
- f. Remaining current on the law with respect to changing technologies to ensure that client data is not subject to legal risk, including waiver of confidentiality.

Other Opinions and Authorities

Ethics opinions issued by other State Bar Associations have taken similar positions.

State Bar of Arizona Ethics Opinion 09-04, for example, reaffirms the conclusion drawn in its prior Ethics Opinion 05-04, and concludes that attorneys can use online storage and retrieval systems for

client documents and information as long as they take reasonable precautions to ensure that the materials are safe and confidential. This Arizona Opinion further notes that lawyers should recognize that their expertise with respect to technology may be limited and should therefore ensure review of precautions by competent personnel, and periodically review systems to ensure that security precautions remain reasonable.

Opinion 701 of the New Jersey Advisory Committee on Professional Ethics discusses the benefits that may arise from web-based digital storage of and access to client documents and information, and then provides as follows:

“The critical requirement . . . is that the attorney ‘exercise reasonable care’ against the possibility of unauthorized access to client information. A lawyer is required to exercise sound professional judgment on the steps necessary to secure client confidences against foreseeable attempts at unauthorized access. ‘Reasonable care,’ however, does not mean that the lawyer absolutely and strictly guarantees that the information will be utterly invulnerable against all unauthorized access. Such a guarantee is impossible, and a lawyer can no more guarantee against unauthorized access to electronic information than he can guarantee that a burglar will not break into his file room, or that someone will not illegally intercept his mail or steal a fax.”

Opinion 701 continues by noting that the content of the obligation to exercise reasonable care depends on the circumstances and must be informed by the available technology, and personnel handling client information must be subject to an enforceable obligation to preserve confidentiality and security. In addition, Opinion 701 excludes original “client property” from its holding, and notes that lawyers must continue to maintain certain original documents, like wills, trusts, deeds, contracts, and corporate bylaws and minutes, and cannot rely solely on digital storage of these materials. This Opinion further stresses the importance of client consent with respect to remote storage of client information.

To similar effect are Ethics Opinion 2010-02 issued by the Alabama State Bar Association, and Formal Opinion No. 33 issued by the State Bar of Nevada Standing Committee on Ethics and Professional Responsibility. Many other resources also are available about the use of SaaS, including the ABA Commission on Ethics 20/20 Working Group’s September 20, 2010 white papers discussing SaaS, and the Law Society of British Columbia’s July 15, 2011 Report of the Cloud Computing Working Group.

CONCLUSION

The Vermont Bar Association Professional Responsibility Section agrees with the consensus view that has emerged with respect to use of SaaS. Vermont lawyers’ obligations in this area include

providing competent representation, maintaining confidentiality of client information, and protecting client property in their possession. As new technologies emerge, the meaning of “competent representation” may change, and lawyers may be called upon to employ new tools to represent their clients. Given the potential for technology to grow and change rapidly, this Opinion concurs with the views expressed in other States, that establishment of specific conditions precedent to using SaaS would not be prudent. Rather, Vermont lawyers must exercise due diligence when using new technologies, including Cloud Computing. While it is not appropriate to establish a checklist of factors a lawyer must examine, the examples given above are illustrative of factors that may be important in a given situation. Complying with the required level of due diligence will often involve a reasonable understanding of:

- a. the vendor’s security system;
- b. what practical and foreseeable limits, if any, may exist to the lawyer’s ability to ensure access to, protection of, and retrieval of the data;
- c. the material terms of the user agreement;
- d. the vendor’s commitment to protecting confidentially of the data;
- e. the nature and sensitivity of the stored information;
- f. notice provisions if a third party seeks or gains (whether inadvertently or otherwise) access to the data; and
- g. other regulatory, compliance, and document retention obligations that may apply based upon the nature of the stored data and the lawyer’s practice.

In addition, the lawyer should consider:

- a. giving notice to the client about the proposed method for storing client data;
- b. having the vendor’s security and access systems reviewed by competent technical personnel;
- c. establishing a system for periodic review of the vendor’s system to be sure the system remains current with evolving technology and legal requirements; and
- d. taking reasonable measures to stay apprised of current developments regarding

SaaS systems and the benefits and risks they present.

In summary, and with respect to the specific questions posed, the Professional Responsibility Section responds as follows.

Vermont attorneys may use SaaS systems for storing, processing, and retrieving client property, as long as they take reasonable precautions to ensure the property is secure and accessible. The nature of the precautions depends on the circumstances. The ability to engage in Cloud Computing is not limited by the specific location of the remote server, although some of the factors noted above, including choice of law clauses, and concerns about access to data in the event of a service interruption or an emergency, may be implicated by the location of the storage server and the extent of backup service provided by the vendor.

Depending on the circumstances, there may be limits on systems that can be used and client property that can be stored with an SaaS vendor, and lawyers must assess each situation

based upon the specific facts and circumstances. For example, it may not be appropriate to rely solely on remote digital storage for preservation of original client property like wills, or other client documents that are subject to permanent retention obligations. Similarly, given that Cloud Computing involves storage of information in the hands of a third party, a lawyer handling particularly sensitive client property, like trade secrets may conclude after consultation with the client that remote SaaS storage is not sufficiently secure.

A lawyer's use of email, calendar, and remote synchronization systems, including systems that are web-based and offered by SaaS vendors, is subject to the same inquiry. Before using such systems, the lawyer should take reasonable precautions to ensure that information in the system is secure and accessible.

Finally, given the rapidly changing nature of technology and the significant manner in which new technologies impact the legal practice including the manner in which confidential client information is communicated and stored, the Professional Responsibility Section invites the Vermont Supreme Court to examine whether changes in applicable Rules of Procedure and Rules of Professional Conduct are warranted to address these issues.

Dual Professions

OPINION NO. 2011-1

Synopsis

An attorney who is a principal owner of a separate online service for the organization and storage of personal information and documents may refer clients and others to the service provided that the attorney takes objectively reasonable measures to assure that the referred individuals know that this law related online service does not provide legal services and that the protections of the client-lawyer relationship do not exist.

Facts

Massachusetts Bar Association : Opinion 12-03

Monday, December 31 2012, 12:29 PM

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- [Ethics Opinions](#)
- [2010-2019](#)
- [2012](#)
- [Opinion 12-03](#)

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Ethics Opinions

Opinion 12-03

Summary: A lawyer generally may store and synchronize electronic work files containing confidential client information across different platforms and devices using an Internet based storage solution, such as "Google docs," *so long as* the lawyer undertakes reasonable efforts to ensure that the provider's terms of use and data privacy policies, practices and procedures are compatible with the lawyer's professional obligations, including the obligation to protect confidential client information reflected in Rule 1.6(a). A lawyer remains bound, however, to follow an express instruction from his or her client that the client's confidential information not be stored or transmitted by means of the Internet, and all lawyers should refrain from storing or transmitting particularly sensitive client information by means of the Internet without first obtaining the client's express consent to do so.

Facts: A lawyer ("Lawyer") wishes to store and synchronize the electronic work files that he creates in the course of his law practice across multiple computers and devices (*e.g.*, smartphones, iPads, *etc.*) so that he can access them remotely. Some of the work files contain privileged or other confidential client information. Lawyer is considering several potential solutions to address his needs, including storing and synchronizing his electronic files remotely using a third-party service that is accessible through the Internet, such as "Google docs." As described by Google, Google docs is a private service that permits users to store their documents and other data on Google's servers and access that information remotely over the Internet using multiple devices and platforms. Numerous other "cloud" based storage options, such as Microsoft's "Windows Azure," Apple's "iCloud," and Amazon.com's "S3" service, exist. The issue presented is whether it would violate Lawyer's obligations under the Massachusetts Rules of Professional Conduct to store confidential client information using Google docs or some other Internet based storage solution, and to synchronize his computers and other devices that contain or access such information over the Internet.

Discussion: Rule 1.6 of the Massachusetts Rules of Professional Conduct governs the confidentiality of client information. Subsection (a) of Rule 1.6 provides, in relevant part, that "[a] lawyer shall not reveal confidential information relating to the representation of a client unless the client consents after consultation...." The duty of confidentiality dictated by Rule 1.6 (as well as other rules) imposes upon Lawyer the obligation to avoid using means of communication with the client that pose an unreasonable risk of inadvertent disclosure to third persons.

In this context, the question posed is whether Lawyer's use of Google docs or another Internet based data storage service provider, which carries with it a small, but genuine risk of unauthorized access or interception, presents an unreasonable risk of inadvertent disclosure and, therefore, violates Rule 1.6(a).

The Committee on Professional Ethics previously has addressed issues of client confidentiality posed by a lawyer's use of the Internet and remote access capabilities. For example, in Opinion 00-01, the Committee concluded that a lawyer's use of unencrypted Internet e-mail to engage in confidential communications with his or her client does not violate Massachusetts Rule of Professional Conduct 1.6(a) in ordinary circumstances. We said, in relevant part,

[i]t is the Committee's opinion that the use of unencrypted Internet e-mail for the purpose of transmitting confidential or privileged client communications does not, in most instances, constitute a violation of any applicable ethical rule, including Rule 1.6. The Committee reaches this conclusion primarily because it believes that both the lawyer and the client typically have a reasonable expectation that such communications will remain

legally and effectively private. *See, e.g.,* 18 U.S.C.A. 2510, *et seq.* (the "Electronic Communications Privacy Act"). The technological possibility that a privileged or confidential e-mail communication could be intercepted in disregard of federal law does not diminish that expectation. Other standard forms of communication, including the telephone and the United States mail, also carry with them some risk of interception. Legal prohibitions on the interception of private telephone calls and letters, however, generally provide protection against unauthorized disclosure sufficient to make those means of communication reasonably secure for purposes of Rule 1.6(a). The Committee believes that, in light of statutes such as the Electronic Communications Privacy Act, the same reasoning now applies to unencrypted Internet e-mail.

Similarly, in Opinion 05-04, the Committee concluded that a law firm may provide a third-party software vendor with remote access to confidential client information stored on the firm's computers for the purpose of allowing the vendor to support and maintain a computer software application utilized by the law firm *so long as* the law firm undertakes "reasonable efforts" to ensure that the conduct of the software vendor "is compatible with the professional obligations of the lawyer[s]," including the obligation to protect confidential client information reflected in Rule 1.6(a). The Committee stated that "reasonable efforts" in the circumstances would include, among other things,

- (a) notifying the vendor of the confidential nature of the information stored on the firm's servers and in its document database;
- (b) examining the vendor's existing policies and procedures with respect to the handling of confidential information;
- (c) obtaining written assurance from the vendor that confidential client information on the firm's computer system will only [be] utilized solely for technical support purposes and will be accessed only on an "as needed" basis;
- (d) obtaining written assurance from the vendor that the confidentiality of all client information will be respected and preserved by the vendor and its employees; and
- (e) drafting and agreeing upon additional procedures for protecting any particularly sensitive client information that may reside on the firm's computer system, to the extent necessary.

The Committee believes that the reasoning set forth in Opinion 00-01 and Opinion 05-04 generally would allow Lawyer also to use Google docs or some other Internet based data storage service provider to store confidential client information, and to synchronize data using that provider over the Internet. More specifically, the Committee believes that the use of an Internet based service provider to store confidential client information would not violate Massachusetts Rule of Professional Conduct 1.6(a) in ordinary circumstances *so long as* Lawyer undertakes reasonable efforts to ensure that the provider's data privacy policies, practices and procedures are compatible with Lawyer's professional obligations, including the obligation to protect confidential client information reflected in Rule 1.6(a). "Reasonable efforts" by Lawyer with respect to such a provider would include, in the Committee's opinion:

- (a) examining the provider's terms of use and written policies and procedures with respect to data privacy and the handling of confidential information;
- (b) ensuring that the provider's terms of use and written policies and procedures prohibit unauthorized access to data stored on the provider's system, including access by the provider itself for any purpose other than conveying or displaying the data to authorized

users;

(c) ensuring that the provider's terms of use and written policies and procedures, as well as its functional capabilities, give the Lawyer reasonable access to, and control over, the data stored on the provider's system in the event that the Lawyer's relationship with the provider is interrupted for any reason (e.g., if the storage provider ceases operations or shuts off the Lawyer's account, either temporarily or permanently);

(d) examining the provider's existing practices (including data encryption, password protection, and system back ups) and available service history (including reports of known security breaches or "holes") to reasonably ensure that data stored on the provider's system actually will remain confidential, and will not be intentionally or inadvertently disclosed or lost; and

(e) periodically revisiting and reexamining the provider's policies, practices and procedures to ensure that they remain compatible with Lawyer's professional obligations to protect confidential client information reflected in Rule 1.6(a).

Consistent with its prior opinions, the Committee further believes that Lawyer remains bound to follow an express instruction from his client that the client's confidential information not be stored or transmitted by means of the Internet, and that he should refrain from storing or transmitting particularly sensitive client information by means of the Internet without first seeking and obtaining the client's express consent to do so.^[1]__

Applying its conclusions to Google docs, Lawyer's proposed Internet based data storage solution, the Committee observes that Google has adopted written terms of service and a privacy policy for users of Google docs (*see generally* <http://www.google.com/google-d-s/terms.html>) that reference and incorporate various other Google policies. Among other things, Google represents that data stored on Google docs is "private" and "password protected," but can be voluntarily shared by the user with others or published to the World Wide Web. The Committee further observes that Google docs and other Internet based storage solutions, like many, if not most, remotely accessible software systems and computer networks, are not immune from attack by unauthorized persons or other forms of security breaches. *See, e.g.,* "How Safe Are Your Google Docs", found at <http://www.odesk.com/blog/2010/05/how-safe-are-your-google-docs>; and "Can You Trust Your Data To Amazon, Other Storage Cloud Providers?", found at <http://www.networkworld.com/supp/2008/ndc3/051908-cloud-storage.html>.

The foregoing policies, protections and resources are referenced by the Committee solely for informational purposes. Ultimately, the question of whether the use of Google docs, or any other Internet based data storage service provider, is compatible with Lawyer's ethical obligation to protect his clients' confidential information is one that Lawyer must answer for himself based on the criteria set forth in this opinion, the information that he is reasonably able to obtain regarding the relative security of the various alternatives that are available, and his own sound professional judgment.

This opinion was approved for publication by the Massachusetts Bar Association's House of Delegates on May 17, 2012.

^[1] The American Bar Association and the bar associations of various states also have addressed the ethical implications of using Internet-based software and data storage services, either formally or provisionally. *See, e.g.*, American Bar Assoc. Commission on Ethics 20/20 "Issues Paper Concerning Client Confidentiality and Lawyers' Use of Technology," dated September 20, 2010; New York State Bar Association Committee on Professional Ethics Opinion 842, dated September 10, 2010; California State Bar Standing Committee on Professional Responsibility and Conduct Proposed Formal Opinion Interim No. 08-0002, approved for public comment in August 2010; Iowa State Bar Association Committee on Ethics and Practice Guidelines Opinion 11-01, dated September 9, 2011; and North Carolina State Bar Ethics Committee Proposed 2011 Formal Ethics Opinion 6, dated October 20, 2011.

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Maine Opinion #194: Client Confidences: Confidential firm data held electronically and handled by technicians for third-party vendors: Maine Board of Overseers of the Bar

Monday, December 31 2012, 12:28 PM

[Home](#) > [Ethics Opinions](#) > Opinion #194: Client Confidences: Confidential firm data held electronically and handled by technicians for third-party vendors

Opinion #194: Client Confidences: Confidential firm data held electronically and handled by technicians for third-party vendors

Issued by the Professional Ethics Commission

Date Issued: June 30, 2008

Question

An attorney has asked for guidance on the ethical propriety of using third party vendors to process and store electronically held firm data. The data would be transmitted to the third parties over a presumptively secure network connection. Processing of firm data may include transcription of voice recordings and transfer of firm computer files to an off-site "back-up" of the firm's electronically held data.

More specifically, the question is whether the use of such services and resources, which may involve disclosure of client information to technicians who maintain the relevant computer hardware and non-lawyer transcribers outside the sphere of the attorney's direct control and supervision, would violate the lawyer's obligation to maintain client confidentiality. The attorney further seeks guidance on what, if any, safeguards would make such practices permissible.

Opinion

While there is no provision of the Code of Professional Responsibility of the Maine Bar Rules that directly addresses this question, several provisions, along with previous opinions of this

Commission, provide a framework for our response. We conclude that, with appropriate safeguards, an attorney may utilize transcription and computer server backup services remote from both the lawyer's physical office and the lawyer's direct control or supervision without violating the attorney's ethical obligation to maintain client confidentiality.

Rule 3.6(a) sets forth the general standard requiring the lawyer to "employ reasonable care and skill and apply the lawyer's best judgment in the performance of professional services." More specifically, Rule 3.6(h)(1) sets forth the lawyer's general obligations to maintain client confidentiality:

(1) Except as permitted by these rules, or when authorized in order to carry out the representation, or as required by law or by order of the court, a lawyer shall not, without informed consent, knowingly, disclose or use information (except information generally known) that:

- i. Is protected by the attorney-client privilege in any jurisdiction relevant to the representation;
- ii. Is information gained in the course of representation of a client or former client for which that client or former client has requested confidential treatment;
- iii. Is information gained in the course of representation of the client or former client and the disclosure of which would be detrimental to a material interest of the client or former client; or
- iv. Is information received from a prospective client, the disclosure of which would be detrimental to a material interest of that prospective client, when the information is provided under circumstances in which the prospective client has a reasonable expectation that the information will not be disclosed.

Rule 3.6(h)(2) addresses the lawyer's obligation to ensure that others working on the lawyer's behalf in the course of representation who are privy to confidential client information likewise maintain the client's confidences. The rule states: "A lawyer shall exercise reasonable care to prevent lawyers and non-lawyers employed or retained by or associated with the lawyer from improperly disclosing or using information protected by paragraph (1) of this subdivision."

The current question concerning these internet based services arises because transcription and backup services are now available at an attractive cost from companies using personnel working outside the lawyer's office and not subject to the lawyer's direct oversight. This situation leaves the lawyer with no direct control over individuals who have access to confidential client information.

As Rule 3.6(h)(2) makes clear and as we have opined previously, the primary responsibility for file integrity, maintenance, disposition, and confidentiality rests with the attorney employed by the client. See Maine Professional Ethics Commission Opinion # 74 (10/1/86). In this case, although the transcriptionists or technicians maintaining the computer backup files are not employed by the attorney, the directives of Rule 3.13(c) still govern because they also apply to non-lawyers "retained by or associated with a lawyer" and therefore require that an attorney "shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the conduct of these individuals is compatible with the professional obligations of the lawyer."

Rule 3.6(h)(2) implies that lawyers have a responsibility to train, monitor, and discipline their non-lawyer staff in such a manner as to guard effectively against breaches of confidentiality. Failure to take reasonable steps to provide adequate training, to monitor performance, and to apply discipline for the purpose of enforcing adherence to ethical standards is grounds for concluding that the lawyer has violated Rule 3.6(h)(2). See Maine Professional Ethics Commission Opinion #134 (9/21/93). Clearly, when employing any outside contractor to perform law-related services, the lawyer does not directly train, monitor, and discipline the employees of the service provider; however, the lawyer retains the obligation to ensure that appropriate standards concerning client confidentiality are maintained by the contractor. The precise parameters of what constitutes "appropriate standards" are not defined in the rules or opinions, but are based on reasonable efforts to prevent the disclosure of confidential information.

With the pervasive and changing use of evolving technology in communication and other aspects of legal practice, particular safeguards which might constitute reasonable efforts in a specific context today may be outdated in a different context tomorrow. Therefore, rather than attempting to delineate acceptable and unacceptable practices, this opinion will outline guidance for the lawyer to consider in determining when professional obligations are satisfied.

At a minimum, the lawyer should take steps to ensure that the company providing transcription or confidential data storage has a legally enforceable obligation to maintain the confidentiality of the client data involved.^[1] See ABA Ethics Opinion 95-398 (lawyer who allows computer maintenance company access to lawyer's files must ensure that company establishes reasonable procedures to protect confidentiality of information in files, and would be "well-advised" to secure company's written assurance of confidentiality); N.J. Sup. Comm. Prof. Ethics Opinion 701 ("Lawyers may maintain client files electronically with a third party as long as the third party has an enforceable obligation to preserve the security of those files and uses technology to guard against reasonably foreseeable hacking.") .

Footnotes

^[1] Although the Privacy and Security Rules of the federal Health Insurance Portability and Accountability Act ("HIPAA"), 45 C.F.R. Part 164, requirements are generally not applicable to lawyers in their obligations to their clients, this law provides very detailed examples of standards intended to protect the confidentiality of patient health information that are now widely in use in the medical field. Under HIPAA, regulated entities that contract with others to provide services involving protected patient information are generally required to have "Business Associate Agreements" with prescribed provisions that detail the contractor's obligations to ensure the confidentiality of the patient information involved.

The contract between a covered entity and a business associate must provide that the business associate will:

(A) Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of the covered entity as required by this

subpart;

(B) Ensure that any agent, including a subcontractor, to whom it provides such information agrees to implement reasonable and appropriate safeguards to protect it;

(C) Report to the covered entity any security incident of which it becomes aware;

(D) Authorize termination of the contract by the covered entity, if the covered entity determines that the business associate has violated a material term of the contract. 45 C.F.R. Â§164.314.

Similarly, the Security Rule, 45 C.F.R. Â§164.302-318, describes various administrative, physical, technical, and organizational security-related safeguards applicable to healthcare entities maintaining protected patient information electronically.

In some circumstances, such as with transcription, human involvement with confidential client information by the contractor's staff is inherent in the service. In that case, additional contractual obligations may be needed to ensure that the contractor's employees or agents who will have direct knowledge of the confidences are adequately trained and understand their personal obligation to maintain the information confidentially. In addition, the lawyer would be well-advised to include a contract provision requiring the contractor to inform the lawyer in the event the contractor becomes aware of any inappropriate use or disclosure of the confidential information. The lawyer can then take steps to mitigate the consequences and can determine whether the underlying arrangement can be continued safely.

Along with taking steps to ensure that the confidential information will be maintained securely by the company providing remote services, the lawyer should also take care to ensure that confidential information is conveyed to the service provider in a secure manner. While data encryption can provide appropriate levels of additional security for highly confidential data in transit in the internet, in some circumstances it may be reasonable to transmit information securely via email without encryption. See ABA Ethics Opinion 99-413 (lawyers may ethically communicate client confidences using unencrypted e-mail sent over Internet, but should discuss with their clients different ways of communicating client confidences that are "so highly sensitive that extraordinary measures to protect the transmission are warranted"); *United States v. Councilman*, 418 F.3d 67 (1st Cir. 2005) (holding that unauthorized interception of email violated federal wiretapping law, thus providing support for a reasonable expectation of privacy in e-mail transmissions). The lawyer will need to evaluate carefully the level of confidentiality protection needed for different types of information transmitted via the internet.