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ADLA member Carter Hale provides a primer to facilitate your efforts in incorporating courtroom technology equipment and trial presentation software in your case



COURTROOM TECHNOLOGY & TRIAL PRESENTATION SOFTWARE: A PRIMER FOR DEFENSE LAWYERS AND A CALL TO ACTION

FOAM BOARD BLOWUPS ARE OBSOLETE. NOW, MORE THAN EVER, IT IS CRITICALLY IMPORTANT FOR DEFENSE LAWYERS TO FAMILIARIZE THEMSELVES WITH COURTROOM TECHNOLOGY AND TRIAL PRESENTATION SOFTWARE, AND LEARN HOW TO USE THEM EFFECTIVELY.

By: **Carter R. Hale**, Scott Sullivan Streetman & Fox, PC | Mobile, AL



It's Sunday evening and your jury trial begins tomorrow morning. While reviewing your *voir dire* questions, your phone pings with a text from one of the co-defendant's attorneys: "*Wanted to let you know we just settled with the plaintiffs.*" Perhaps you have had a similar experience. Hopefully you anticipated this possibility and were prepared to try the case with or without a co-defendant. But then your stomach drops to the floor: The co-defendant's attorneys had tasked themselves with utilizing and running trial presentation software for both defendants. Your entire case – your PowerPoint for your opening statement, all of your trial exhibits, as well as annotated demonstrative aids you prepared and organized to be queued up for direct- and cross-examinations – now resides in a program that may no longer be available to you, and even if it is, you have absolutely no idea how to operate it or any of the equipment necessary to use it.

While the above is merely an anecdotal scenario that underscores the need for technology-challenged litigators to familiarize themselves with courtroom technology and trial presentation software, there are a number of significant reasons why it is crucial that defense attorneys promptly jump aboard the legal technology train.

To be clear, the roots of this call to action did not sprout from COVID-19. Sure, the pandemic forced lawyers to learn (or attempt to learn) how to use Zoom. Most of you have attended Zoom hearings. You may have taken remote depositions and even uploaded exhibits for use at those depositions. Beyond these narrow, limited-used environments, however, far too many defense lawyers have distanced themselves from courtroom technology

and trial presentation software for far too long. For some, intimidation or fear is the culprit. Some argue they don't have the time, while others simply dismiss the notion that courtroom technology is a "necessity," claiming

their foam board blowups and flip charts are just as effective and serve them just fine.

Whether you have used one or more of these excuses (all of which this article will debunk), it's time for every ADLA member to acknowledge and accept that courtroom technology is, in fact, a necessity; that its prevalence is growing exponentially and will only continue to do so; and that now – not tomorrow, next week, or over the next holiday, but now – is the time to become familiar with courtroom technology and trial presentation software, and how to use them effectively. This is equally true for seasoned litigators with decades of experience and new lawyers who just received their bar admission certificates.

Put simply, the extent to which your experience and skill pay off in the courtroom is and will be determined in significant part by your familiarity with courtroom technology and trial presentation software and your ability to use it effectively.¹

Along with our professional obligations, we are doing ourselves – and, more importantly, our clients – a grave disservice if we are unfamiliar with courtroom technology and trial presentation software, and how to use them effectively.^{2,3} Further, juries expect it, and we should anticipate that the other side is going to use it. Finally, some judges not only require it, but prohibit the use of other demonstrative aids such as blowups.⁴

You do not need to pursue an IT degree. Instead, you need a general, foundational understanding of and familiarity with the following:

- The technology equipment already in place in the particular courtroom in which you will try your case;

- Trial presentation software and/or other technology tools available for purchase and use, and their respective pros and cons as it relates to, among other things, cost, ease of use, and suitability for the particular cases you typically litigate; and
- The compatibility of these technology tools with the court's equipment (*i.e.*, ensuring they "play well" with the court's equipment), along with how well they are suited for the particular venue where you will use them (*i.e.*, the courtroom's layout, size, etc.).

The underlying goal of this article is two-fold: to serve as a primer to facilitate your efforts in incorporating courtroom technology equipment and trial presentation software in your cases, and to provide you with a skill level sufficient

to efficiently and effectively use these technologies. While this article is by no means all-inclusive, my hope is that it will provide you with a painless-as-possible roadmap.

By design, I wrote this article in an intentional manner that would enable me to

pitch you this commitment: Give me your time and read this article, and I can (almost) guarantee you will be positioned to use courtroom technology equipment and trial presentation software at your next jury trial. And, to the extent you may have a question or two, feel free to reach out to me. I can *unequivocally* guarantee you that if I don't have the answer, I will either put you in touch with someone who can, or get the answer for you myself. So, read on!

Why you need to be Technologically-Competent... NOW.

1. Clients, judges and jurors all expect lawyers to use technology at trial.

As noted at the outset, your clients expect you to be technologically proficient. Judges increasingly continue to conduct and navigate virtual hearings with ease, and, in turn, they expect the same from you. Perhaps most importantly, jurors expect you to use technology at trial. On this front, it is critical to note that this expectation is not limited merely to Millennials. Older jurors such as Baby Boomers are increasingly expecting media presentations in the courtroom.⁵ This shift is reinforced by a recent survey which revealed that "56% of potential jurors expect attorneys to use PowerPoint in presenting their case," and "64% said they would expect attorneys to use creative graphics and videos to illustrate their case."⁶

2. Demonstratives are a powerfully effective way to present your case.

We've all heard the saying, "A picture's worth a thousand words." This is especially true when presenting evidence to a judge or jury. Countless studies have long established that the overwhelming majority of people

Go through all electronic exhibits of the respective parties just as you would check paper exhibits to ensure any applicable or necessary redactions have been made (e.g., evidence the court has excluded pursuant to a motion in limine; evidence that is inadmissible under the Alabama Rules of Evidence, or evidence that is otherwise objectionable on other grounds).

retain information presented visually far better than they remember information presented orally. Likewise, the manner in which information is presented (*i.e.*, visually through presentations) has proven far more persuasive and effective with jurors.

3. New types of evidence necessitate the use of technology at trial.

With the rapid and exponential growth of new types of evidence, and, consequently, new sources of evidence, lawyers must be versed in how to present these various kinds of information at trial. While videos and photographs have long been used at trial, the types of electronic and digital media, along with the sources where they reside or are stored, has changed and expanded astronomically. Videos are no longer limited to closed-captioned videos burned to DVDs, and photos are no longer confined to digital cameras. Today, sources of video recordings and photographic evidence include cellphones; home security cameras; dashboard cameras; drones; social media applications; GoPros; in-vehicle infotainment systems (IVIs); internet of things (IoT) devices such as Amazon Alexa and Apple HomePod mini, and wearable devices such as Apple Watches and Fitbits, to name just a few examples.

Similarly, social media evidence has infiltrated the litigation arena, from photos, videos, and location information to posts which can be used to demonstrate a person's emotional state (or lack thereof). Jurors don't want you to tell them what the plaintiff posted; they want to see the post itself, and it is far more effective and persuasive to show them in the same manner in which they themselves are familiar seeing them (*i.e.*, on a screen).

Presenting other evidence such as Google Earth images or Google Street View images electronically is likewise far more effective than simply holding up an enlarged photograph of an intersection. Using the Google Maps platform, for example, enables you to pan out, zoom in, and navigate a particular area – giving jurors a far better understanding of the location at issue.

HOW and WHERE to Start.

1. The courts' technology equipment.

In lieu of undertaking exhausting research or embarking on an unnecessary spending spree, first find out what technology is already in place in the courtroom where you will be trying your case. This is the first and easiest step.

Make a list of the equipment that is present, confirm that it works, and identify the adaptors and cable connections each supports (*i.e.*, see what inputs and outputs the equipment has). This will likely include document cameras (think overhead projectors); a "technology cart"; TV monitors, and projectors. You will want to note where these items are located in relation to your counsel table. Also identify nearby power outlets that you will use.

Of importance particularly during these current times is to confirm with the judge or his or her judicial assistant the arrangement of the courtroom for trial. Do not assume that the courtroom will be set up at trial exactly as it is on a day you are there prior to trial. Because of the pandemic, you must take into account that the traditional layouts may give way to alternative setups. One commonly-used courtroom layout for jury trials during COVID-19 is having the jury seated in the gallery (meaning you will sit on the opposite side of the table with your back to the bench). The judge may sit off to the side, with witnesses testifying from the jury box.

With these preliminary matters in mind, we will now turn to the courtroom technology equipment available in the federal district courts in Alabama, and the varying (to non-existent) courtroom technology equipment in Alabama's circuit court courtrooms.

Federal Courts

For federal cases, the district courts' respective websites provide especially informative details about the technology they have, complete with pictures and specifications. The Southern District's courtrooms include the following features:⁷

Technology Lectern

The lectern (shown) contains the document camera, several laptop inputs, and a touch screen. It is height adjustable for ADA compliance. There is also an Apple TV available in the lectern for wireless streaming of evidence, be that video or documents.



Courtroom Technology - Touch-Screens

Touch-screens are available at the witness box and the lectern. They can be used to call attention to certain areas of a document, image, computer output or video. The touch screen function is available as a layover for any video input received by the system.



Evidence Monitors

There are monitors throughout our courtrooms which receive HD digital video. The monitors display items placed on the document camera, laptops connected to the audio/video cables, someone appearing via Video Conference, and they mirror the annotation input from the touch-screens. You will find two monitors on each counsel table, one monitor per two jurors in the jury box (shown), at the lectern, the witness stand, the courtroom deputy station, and on the judge's bench. The lectern and witness stand both have touchscreen monitors which allow annotation.



There is also a confidence monitor outside the jury box (shown) which reflects what is being seen by the jurors. If evidence has not yet been admitted, the Courtroom Deputy will mute what the jury can see and this monitor will be blank.



The courtrooms in the Middle District of Alabama feature similar technology equipment as those in the Southern District, and its website provides additional, informative guidance and policies for attorneys.⁸

Unlike the Southern and Middle Districts, the Northern District's website does not currently include information about the specific courtroom technologies available in its courtrooms. A number of you may have been in one or more of the Northern District's courtrooms in the recent past and know what equipment they do and do not have available. Regardless, best practices include (1) contacting the court staff for your particular district court or magistrate judge, and (2) carefully reading the court's pre-trial orders, as well as any applicable standard orders specific to the judge presiding over your case.⁹

One factor should always be kept forefront with respect to the use of courtroom technology and trial presentation software in any federal court courtroom: the particular court and its rules and orders ultimately dictate what technology you can and cannot use, and the extent or limit to which you can use it.

U.S. District Court for the Middle District of Alabama

Evidence Presentation in the District & Magistrate Courtrooms

Bench:


- 10-inch Crestron tablet, controls all components at Judge and Deputy benches
- Judge Override System

Evidence Presentation Lectern:

- 18-inch gooseneck microphone
- Digital Document Camera
- Blu-ray player
- 21-inch annotation monitor
- Desktop PC
VGA and HDMI inputs

Witness:

- 21-inch monitor with annotation
- 18-inch microphone
-
- Wifi available for attorneys
- 2x 65-inch spectator monitors



Attorney Tables:

- 24-inch widescreen LCD Monitors
- VGA & HDMI connections for laptops
- 2 microphones on each table
- Remote interpreter headsets at table

Additional Presentation System features

- Screen capture with annotation
- Video conferencing
- Video streaming to overflow crowds

Jury:

- 4x 24-inch monitors and 1x 65-inch monitor

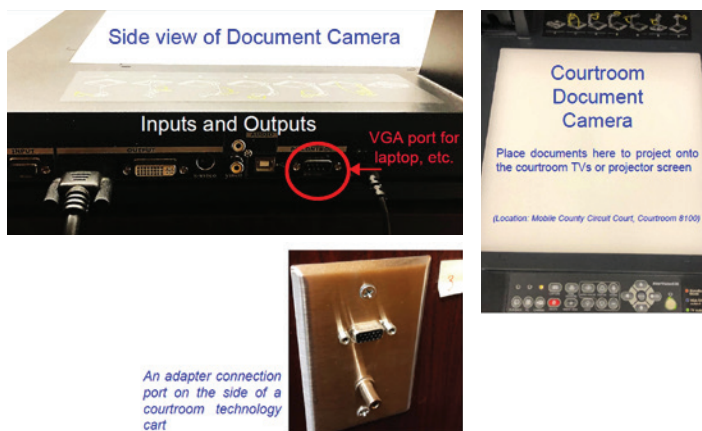
Audio System:

- Wireless Microphone System
- Teleconference ready
- Interpreter headset and boom microphone
- Assisted Listening Headsets for both hearing impaired and second language
- Bench Conference with white noise

State Courts

1. Courtroom technology equipment.

Not surprisingly, the types of courtroom technology available in state circuit courts vary not only from county to county, but often among the courtrooms within the same courthouse. As with cases in federal court, before making a decision as to (1) the technology you plan to use at trial and (2) how you will use it, you first need to find out what equipment the state circuit or district court already has in place (and, equally important, what it does not). Perhaps most commonly found in circuit courtrooms are document cameras with a display surface and control features similar to the one below.



Second, be sure to inquire as to the court's policies regarding usage of the court's equipment at trial (*i.e.*, whether you must use the court's equipment exclusively, or, whether you can utilize the court's equipment in connection with your own equipment and/or presentation software).

Third, make note of the location of the court's equipment within the courtroom and their proximity to your counsel table – in particular, outlets, adapters, technology carts and TVs. However, as emphasized earlier, be sure to confirm with the judge or his or her judicial assistant exactly how the courtroom will be arranged for trial – including the locations of the court's technology equipment, counsel tables, the judge, witnesses, and the jury.

For convenience, below is a non-exhaustive list of factors you should consider when preparing to use the court's technology equipment and/or your own equipment and trial presentation software.

Pre-Trial Technology To-Do List	
To Do	Comments
Orient yourself with the courtroom	<p>Note your counsel table in relation to the location of:</p> <ul style="list-style-type: none"> - the judge - the <i>venire</i> (for <i>voir dire</i>) - the empaneled jury - witnesses, including both those attending in person and those who may be attending remotely - outlets - the court's technology cart - monitors / screens / TVs
Confirm that the court's technology is operating properly	Just because there's a TV or projector in the courtroom, or a connection port for a laptop, doesn't necessarily mean it works properly or at all.
Identify the cables and adaptors you'll need to bring with you to court	If the court's technology cart has a port to connect your laptop or other device, it's useless if a VGA adaptor is required, and all you have with you is an HDMI cable (more on these terms later).
Ensure your equipment is compatible with the court's	While I advocate below for a trial setup that doesn't require a DVD player, if you intend to play a DVD at trial and the court has a DVD player, test it to make sure it reads (plays) your DVDs.

2. AlaFile: Electronic Exhibits.

Before transitioning to trial presentation software, it merits mentioning here that exhibits and other documents (*e.g.*, case law) can be uploaded to AlaFile for use at hearings and other proceedings, including trial.¹⁰ At this time, the feature is in beta testing, but is currently available for use in

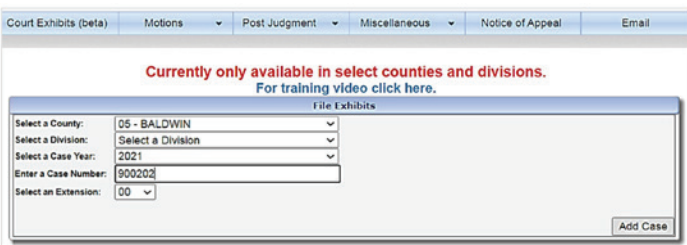
the following counties: Baldwin; Cherokee; Jefferson – Bessemer; Mobile; Morgan; Russell, and Shelby.¹¹

For cases you have in these counties, you can upload exhibits or other documents you want to discuss or reference, for example, a summary judgment hearing, as well as exhibits you seek to have admitted into evidence at trial.

When you log into AlaFile, simply click the “Court Exhibits (beta)” tab at the top:



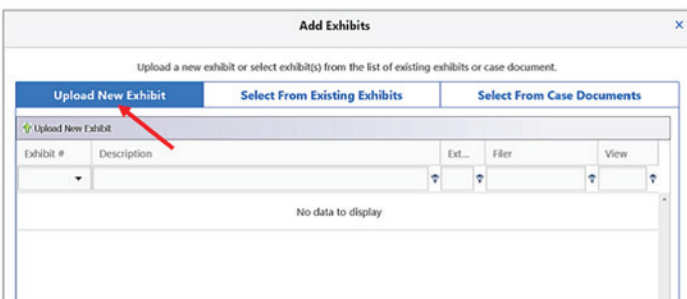
This will direct you to this familiar screen you see when you e-file other documents:



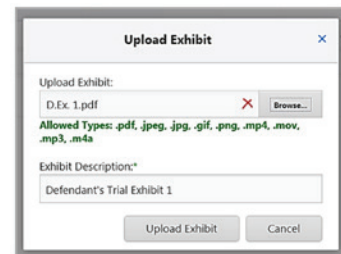
Note there is also a link to an informative training video.¹² After you have selected the county, division, case year, and entered your case number, click “Add Case” and then “Continue”. You will be directed to the following page, which lists the future hearing dates in your case:



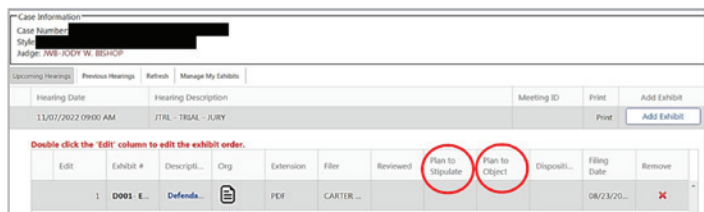
Locate the hearing, trial or other setting for which you want to upload exhibits, and click the “Add Exhibit” button. The following pop-up window will appear, where you will then click on the “Upload New Exhibit” button:



Click the “Browse...” button to select the exhibit that you want to upload from your computer. Once you’ve uploaded and named it, click “Upload Exhibit”. From here, you will be directed to the screen below, where your exhibit is shown.



Parties have the option to select those exhibits of their opponents to which they plan to agree or stipulate to their admissibility, or to which they plan to object. However, you will not be bound by selecting either of these options for any exhibit. Rather, stipulations and objections will be made and/or confirmed on the record and through formally filed pleadings and court orders.



Trial Presentation Software.

Now that you have a working knowledge of the technology equipment most commonly available in our federal and state circuit court courtrooms; the key factors to address with respect to that equipment (*i.e.*, its operability, its location in the courtroom, and the adaptors and cables necessary to connect to and use it), along with an overview of uploading exhibits to AlaFile, you’re ready for the fun part: trial presentation software.

First, as a combined introduction and double *caveat*, I have focused on one specific trial presentation software. While word and space limitations are part of the reason, I do not want you to feel overwhelmed by a litany of options, all with different features, functions, and pros and cons. Moreover, I believe you will find the trial presentation software discussed below to be extremely easy to understand and operate (regardless of your technology skill level), cost-efficient, and at the same time feature-rich.

The second *caveat* is that throughout this article, I use the term “trial presentation software.” As you will see below, the software discussed works very well in many other matters aside of trial. Indeed, these tools were designed and developed for use in many other litigation phases over the life of a case, including document and deposition review, analysis and organization; the ongoing development of the defense of your case; written discovery; depositions, and summary judgment hearings.

LIT SUITE

You may have heard of **TrialPad** – the first iPad app specifically designed for lawyers. It debuted in 2010, the same year as the first iPad was released. Over the past decade, while consistently improving TrialPad and adding new features (many requested by lawyers), Lit Software developed other apps, including **TranscriptPad** and **DocReviewPad**. Most recently, on May 8, 2021, Lit Software introduced its latest app, **Exhib-**

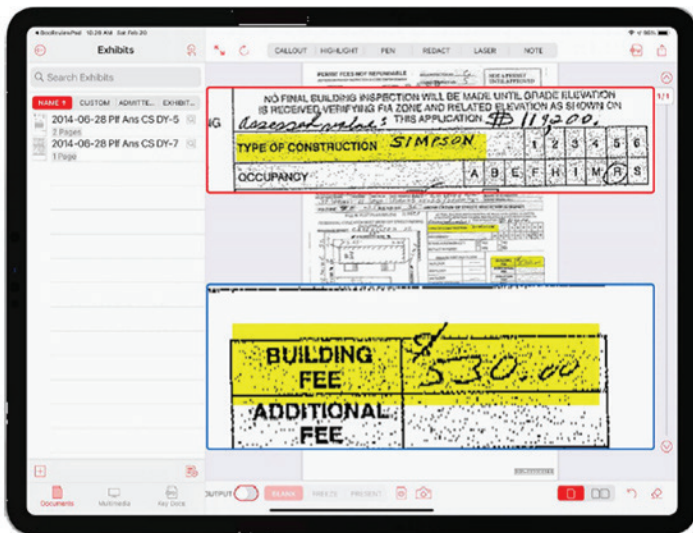
itsPad.¹³ With LIT SUITE, you get all 4 of these apps and all updates to them. Below is an overview of each app, their key functions and features, along with some how-to's.

1. TrialPad.

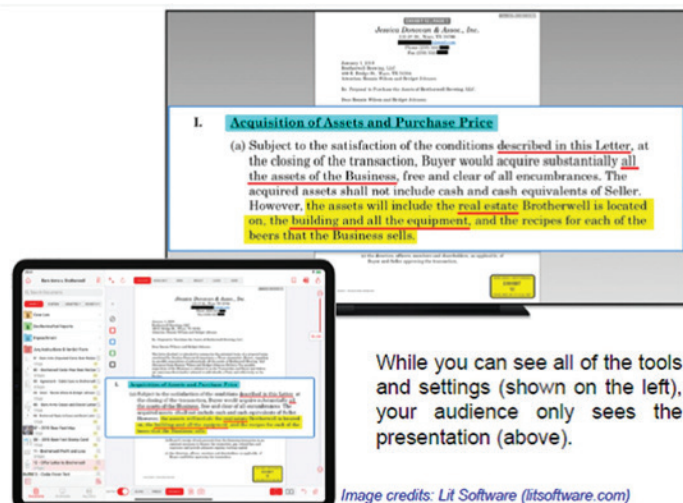
With the TrialPad app, you can easily present evidence to a judge or jury, and use exhibits during your direct- and cross-examinations of witnesses at trial or in depositions (whether remote or in person). TrialPad has feature-rich tools that are easy and quick to create – whether in advance or in real-time, and equally as easy and efficient to use.

Annotation Tools

With TrialPad, you can highlight parts of a document, as well as mark on it as you go using your finger or Apple Pencil. The Redact tool allows you to place a black or white box over portions of a document. A “virtual laser pointer” enables you to point to a particular part of a document when you are discussing it with a witness or the jury. The Callout tool is especially powerful. Simply select the portion you want to enlarge, then use Callout to zoom in on that area. The process is seamless and impressive. An added bonus is the Snapshots tool, which enables you to generate a PDF of a document you annotated should you want to use it again later.



Screenshot by, and used with permission from, Jeff Richardson, Esq. (iPhoneJD.com)



While you can see all of the tools and settings (shown on the left), your audience only sees the presentation (above).

Image credits: Lit Software (litsoftware.com)

Exhibits

TrialPad enables you to apply exhibit stickers to documents – whether one at a time, or to a group of documents, and you can customize the fields in the sticker to your liking, as well as the color of the sticker. Moreover, you can keep track of which exhibits are admitted into evidence.

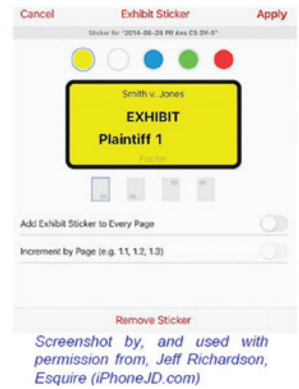
Multimedia

By now, you're probably not surprised to learn that you can present videos and audio using TrialPad, along with documents.

Document Upload

You can upload your documents, media and exhibits into TrialPad via most any cloud service that integrates with Apple's Files app (e.g., Dropbox; Box; Microsoft OneDrive; Citrix Files; Google Drive, and iCloud). Alternatively, you can put them on a USB (thumb drive) and upload them to your iPad via a USB connector in rapid time.^{14,15}

You can import individual files, a set of files, or “import a .zip file (up to 1GB), which lets you create folders and subfolders on your computer, and then maintain those folders when you import [them] into TrialPad.¹⁶

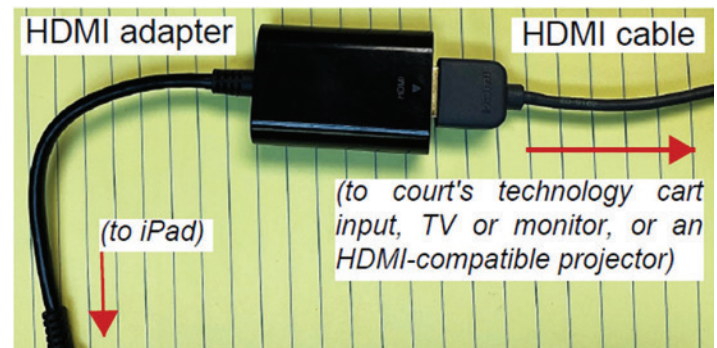


Screenshot by, and used with permission from, Jeff Richardson, Esquire (iPhoneJD.com)

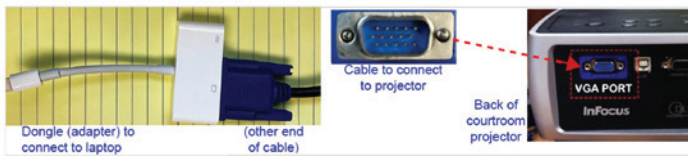


Equipment and set up to present wirelessly or with a wired connection

If you do not have an iPad, that is obviously the first thing you will need to purchase. TrialPad offers the flexibility of presenting with or without a wireless connection. To present with a wired connection, you will need either an HDMI adaptor to connect your iPad to the court's technology port or to connect to a TV (provided they have an HDMI input).



If you are using a projector that does not have an HDMI input, it most likely has a VGA or DVI input. In such case, simply use a VGA or DVI adapter as illustrated in this diagram:



You can present wirelessly – **without a WiFi connection** – via Peer-to-Peer Apple AirPlay using an Apple TV (it’s a box, not an actual television).¹⁷ You will need an Apple TV if you do not have one, as well as an HDMI cable. Your set up will be similar to this:



Cost Options

I created the table below to present the approximate costs for purchasing LIT SUITE and using its apps at trial. Simply view the costs in the column that applies to you, and you will see the items you will need to purchase. For items you already own, simply reduce the total cost by the amount of that item. Items in italics are optional but recommended.

	I want to present with TrialPad wirelessly	I want to present with TrialPad using a wired setup
LIT SUITE	\$399 annual subscription	\$399 annual subscription
Apple iPad	from \$350 - \$1,300	from \$350 - \$1,300
Apple TV	\$150	N/A
HDMI cable	\$20 - \$60	\$20 - \$60
HDMI adapter	\$40	\$40
<i>USB Adapter to upload docs to TrialPad</i>	\$40 - \$60	\$40 - \$60
One-time, initial total	\$999 - \$1,949	\$849 - \$1,799
Annual cost thereafter	\$399	\$399

Why it's worth every penny

To the extent the cost gives you any heartburn, the price tags associated with other options are significantly greater. Additionally, TrialPad can easily be used by *you* while you are trying your case. This means you do not have to rely on someone else to have the correct exhibit or other document ready to go, or pay for a trial technician with specialized skills.¹⁸ It also eliminates the constant, “Next slide, please”, interruptions you otherwise make when using a program that requires another person to operate it.

As we all well know, the time and expense associated with having large, foam board blowups made is costly. (And, I suspect I am not the only ADLA member who has called their legal copy vendor late on a Sunday evening because I thought of another document or deposition excerpt I wanted enlarged at the last minute.)

Moreover, LIT SUITE comes free of the non-monetary expenses that accompany other trial presentation software, such as time, inefficiency, staffing, and uncertainty, to name a few.

TrialPad also affords you the freedom to move around the courtroom, allowing for better engagement with the jury and witnesses. Even a laptop placed on a podium creates a barrier between you and the jury, a witness, or both. iPads are small and flat, providing an unobstructed visual connection between you and your audience.

In addition to all of the benefits highlighted above, you can also use TrialPad and the other Lit Software apps comprising the LIT SUITE bundle in a host of other litigation settings besides trial, such as depositions, dispositive motion hearings and mediations.

2. TranscriptPad.

I've never been a big fan of deposition summaries. I know some lawyers heavily rely on them. My micro-managing, over-meticulous nature may be the reason. Whatever the case, and regardless of your position on deposition summaries, all litigators can benefit tremendously from Lit Software's TranscriptPad app, which comes with the LIT SUITE app bundle.

First, TranscriptPad is the go-to app for reading, reviewing, navigating, and annotating deposition transcripts. With the app, you can assign Issue Codes relative to your case, and within a matter of seconds, it will go through the 15 or 20 depositions that have been taken in that case and generate a report. This feature is especially intuitive: it doesn't just grab a page and line number where a particular word was used, but will capture the question preceding it (if the word was in an answer) and capture the answer (where the word was in a question). This way you have the context in which the particular word was used.

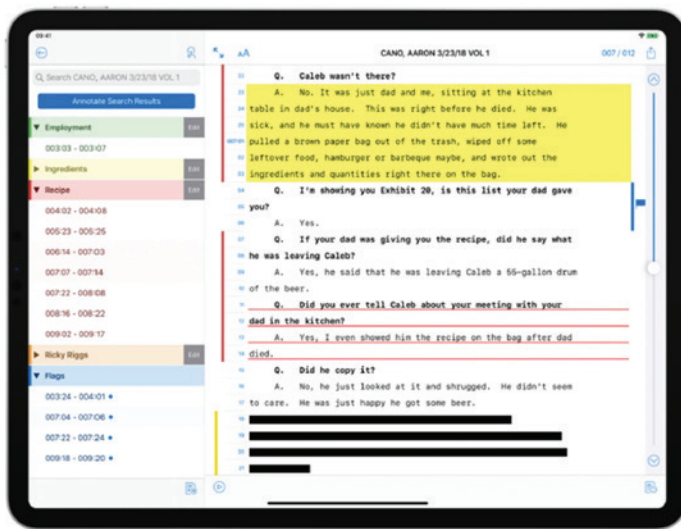


Image credit: Lit Software (litsoftware.com)

Further, because a line of testimony may be relevant to more than one issue in your case, you can assign multiple Issue Codes to the same text. The reports that TranscriptPad generates are fully customizable and searchable as well.

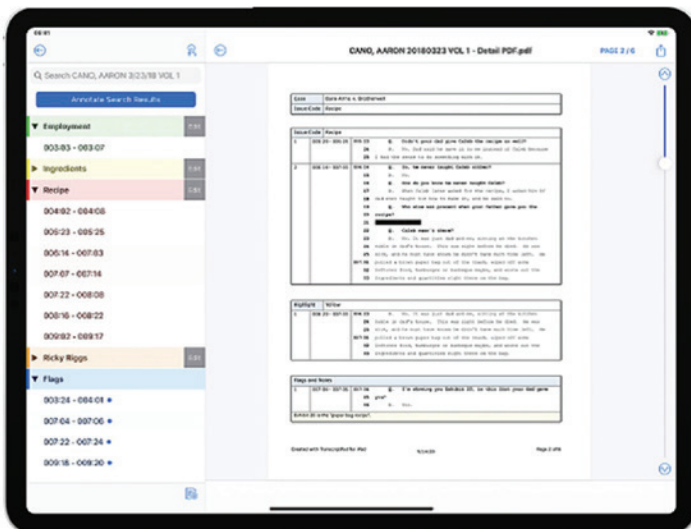


Image credit: Lit Software (litsoftware.com)

The result is an organized and searchable narrative capsule. You can print, export or email the reports in PDF. You can also export a report as a Microsoft Excel file, which, when opened, will have tabs for each issue code.¹⁹ The Excel document has different tabs for each Issue Code.²⁰ To the extent *this* is considered a “summary,” I love it.

Associated deposition exhibits are also organized in TranscriptPad. You can open them up, view them, and when you close them out, you are automatically returned to the page and line where you were reading.

Speaking of reading, the latest update release of TranscriptPad has a new feature called “Speak Transcript.”²¹ Yes, you guessed correctly; TranscriptPad will speak the deposition testimony to you. This means you can listen to a deposition while driving to a hearing out of town, or writing a summary judgment brief on your computer.

One *caveat* should be noted regarding TranscriptPad: it does not work with PDF versions of transcripts. You have to upload the ASCII file versions, instead. Most court reporters typically email these to you, anyway, but if they don't, just simply ask for it. That said, in TranscriptPad, deposition transcripts look like the PDF copies to which most of us are accustomed to reading.

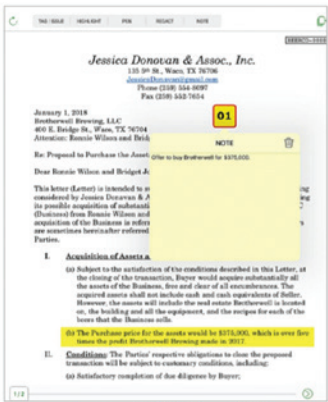
3. DocReviewPad

Mega tech enthusiast and New Orleans attorney, Jeff Richardson, best describes DocReviewPad: it is “sort of like TranscriptPad for Documents.”²² You can upload your case documents to DocReviewPad and have them all in one place, and with you everywhere you go.



Image credit: Lit Software (litsoftware.com)

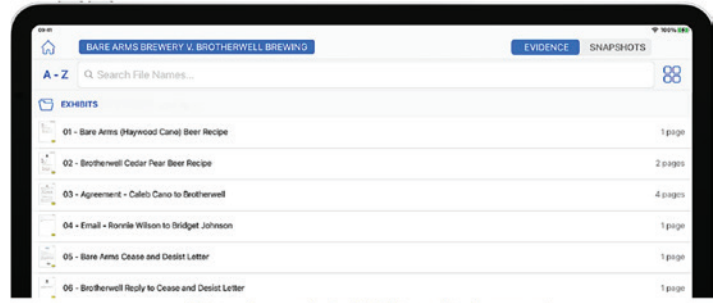
Store your documents in separate case folders and customize how they're organized to suit your preferences. Search functionality is DocReviewPad is powerful – allowing you to search across every document you have uploaded filter your searches, to view the document or documents you sought to retrieve. You can annotate documents, assign them color-coded Issue Codes or Flags. Better yet, DocReviewPad will bates number your documents for you.



Images credit: Lit Software (litsoftware.com)

annoyance to create (or have created for you). What this means, of course, is that each juror will need an iPad.

Now, before you file this away in a “never-gonna-happen” folder, think of the time and expense involved with exhibit binders. With compatible iPads starting at around \$330, your investment of \$4,950 (12 jurors, the judge, his or her judicial assistant, and opposing counsel) will pay for itself over time. You will eliminate future printing and copying costs –paper and ink, as well as assembly into binders (which aren’t free, either). Further, it is much faster to load the exhibits admitted into evidence onto iPads is much faster than printing and organizing binders.²³



Mockup of screenshot by Lit Software (litsoftware.com)

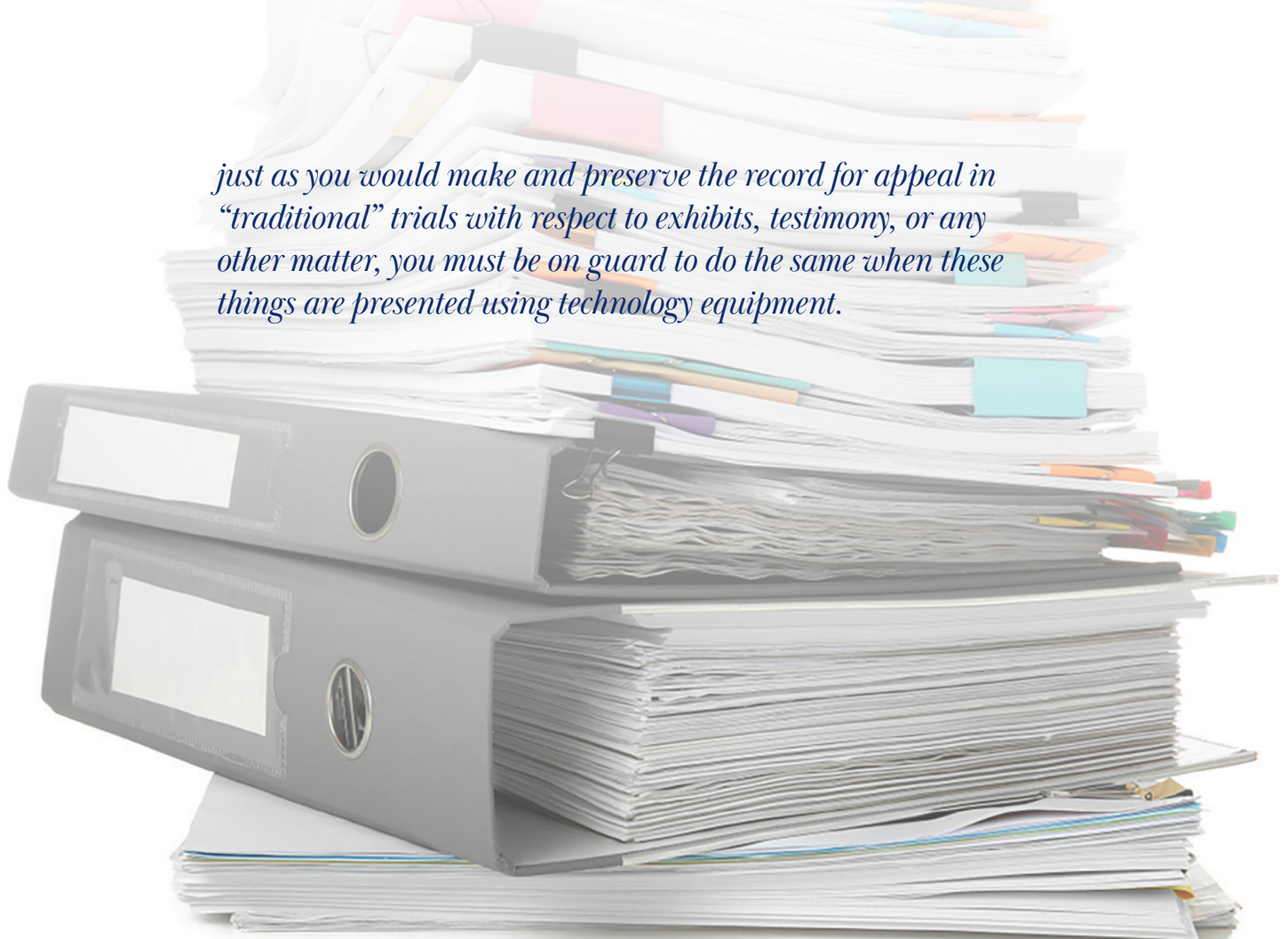
Attorney Jeff Richardson in New Orleans, who I mentioned earlier in this article, wrote an early review of ExhibitsPad.²⁴ What is particularly informative is the detailed response in the comments by the head of Lit Software,

DocReviewPad also provides piece of mind when it comes to ensuring your documents don’t somehow disappear into the abyss. The app’s archiving feature backs up your cases, including all Issue Codes, Flags, and annotations, which also enables you to share them with other DocReviewPad users.

4. ExhibitsPad.

Lit Software’s newest app is ExhibitsPad, which was released just a few months ago. I have only briefly played around with this iPad app (which is free on the App Store), but its use purpose is exciting. ExhibitsPad works as a replacement for those thick, heavy exhibit binders that are an

just as you would make and preserve the record for appeal in “traditional” trials with respect to exhibits, testimony, or any other matter, you must be on guard to do the same when these things are presented using technology equipment.



Ian O'Flaherty, who highlighted some of the key features and capabilities of ExhibitsPad, which include:

- A court employee (or counsel) can load evidence into the app easily and quickly via a USB drive.
- The Home Screen of ExhibitsPad has a document, page, and multimedia count to ensure that every iPad has the exact same set of exhibits.
- Every import of exhibits will completely replace the exhibits of any previous import, eliminating any possibility that exhibits from a previous matter could get left in the app and get with the current case being deliberated.
- The app is very intuitive with a minimum learning curve, making it easy for non-technically proficient users to navigate and review the evidence. (Everything is on one screen with a flat hierarchy so that users with different technology comfort levels won't get lost within the app.)
- Robust and easy search capabilities make finding exhibits a breeze among hundreds of exhibits that may be admitted into evidence. (A large search field is always at the top of the screen.) Exhibits are searchable by file names or types, exhibit numbers, or parts of names. OCR data is not searchable, preventing a juror from using the power of an iPad to mine the data. (As a user types in the search field, the files are filtered to only show documents or multimedia files that contain those characters.)
- Jurors cannot exit the app, e.g., to access the internet. This is accomplished using Apple's Guided Access.²⁵ Additionally, a password is required to get to the Home Screen.
- Jurors can take screenshots (called "Snapshots") of a particular page of a document for later reference. The Snapshot tool stores any Snapshots in a dedicated Snapshots area in the app. Jurors can also annotate a snapshot of an exhibit using Apple's familiar markup tools without altering the original exhibit.²⁶

Bonus Tips

1. Practice, Practice, Practice...

Just as the saying goes with washing hair – “rinse and repeat”, you, too, should practice, practice again, and then practice another time. This includes ensuring (1) that all equipment is operating properly; (2) that all documents are visible and easy to read when projected or viewed on large screens; (3) that images appear clear and not grainy or pixelated when displayed on large screens; (4) that videos play seamlessly; and (5) that audio is easily discernable and volume levels are appropriate. Monday morning is not the time to make sure everything is operating correctly.

2. Triple-check your exhibits and those of the other parties.

Go through all electronic exhibits of the respective parties just as you would check paper exhibits to ensure any applicable or necessary redactions have been made (*e.g.*, evidence the court has excluded pursuant to a motion *in limine*; evidence that is inadmissible under the *Alabama Rules of Evidence*, or evidence that is otherwise objectionable on other grounds).

Indeed, unlike with paper exhibits, where the risk that jurors might unintentionally see inadmissible and excluded evidence is rather slim, the same does not hold true with electronic exhibits. When paper exhibits are used, there are opportunities to check and re-check exhibits before they are published to the jury. With electronic exhibits, there may be fewer opportunities (if any) to conduct a last minute check of an exhibit before it is presented on a screen for the jury to see (particularly by the other side). As you well know, once they are displayed on large screens for the jury to see, it may very well be too late to un-ring the error bell.²⁷

Of course, mistakes can and will happen. But this should in no way deter you from using technology to present your case at trial. Mistakes are made using archaic demonstratives, as well, like flipcharts. Indeed, in late 2019, I tried a week-long jury case in Mobile County Circuit Court. In his closing argument, the plaintiffs' attorney used a flipchart to add up medical bills and expenses, lost wages, and other monetary damages which his clients wanted the jury to award. During the course of this exercise, his easel fell over twice, and worse – he miscalculated his addition, shortchanging his clients to the tune of several hundred thousand dollars. The resulting product, red marker scribbles through numbers with arrows pointing to other numbers, was not an impressive display for the jury.

The point is, just as you would make and preserve the record for appeal in “traditional” trials with respect to exhibits, testimony, or any other matter, you must be on guard to do the same when these things are presented using technology equipment.²⁸

Conclusion.

I hope through reading this article that you have developed a serious interest in using courtroom technology and presentation software at trial and elsewhere in your practice. Moreover, I hope you have an increased comfort level, and will act now to get the technology wheels in motion. There are a variety of options available, and a hybrid may be the avenue you choose. I intentionally avoided presenting you with an overwhelming smorgasbord of options because the market is crowded, and attempting to jump head-first into the legal technology ocean with blinders on can be a daunting and intimidating undertaking, whether you're a tech luddite or you're tech savvy.

Regardless of your choice, I wish you the best of luck. I know your fellow ADLA members will be proud of your performance at your next trial. 🚀

Endnotes

¹ As discussed in this article, the pandemic has forced courts to employ new means of conducting proceedings, including complex and document-intensive summary judgment hearings and bench and jury trials. The research conducted on courts' adoption and implementation of different technologies in order to carry out proceedings are not likely to fully return to the former, traditional ways they've been undertaken whenever the pandemic ends. This reality is, in large part, attributable to courts' first-hand realization of the efficiencies inherent in these technologies and their effectiveness in accomplishing their intended objectives. To this end, we, as lawyers, would be remiss to assume courts will return completely to the former, traditional methods of conducting proceedings. *See, e.g.*, Jennifer Bottomly, Bufford, K., and Strokes, H., “Practicing Law at a Distance: The Circuit Bench Offers Guidance for Lawyers Navigating the Courtroom during the COVID Pandemic”, *ADLA Journal*, Vol. 36, No. 2 (Fall 2020), pp. 46-57 (comprising interviews with several Alabama circuit court judges who majorly shared positive experiences using Zoom and other technologies).

² The Alabama Rules of Professional Conduct do not contain language specifically requiring lawyers to be technologically competent. Ala. R. Prof. C. 1.1 states that a lawyer shall provide “competent representation”, which it defines as “the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.” The Comments to Rule 1.1 provide that “[t]o maintain the requisite knowledge and skill, a lawyer should engage in continuing study and education.” *Id.* Still, attorneys should not disregard technology competence in their compliance with this admittedly broad language. See Ambrogio, Robert, “Tech Competence”, LawSites, <https://www.lawsitesblog.com/tech-competence>. ABA Model Rule 1.1 specifies that lawyers should be technologically competent, including knowledge of “the benefits and risks associated with relevant technology”. While Alabama has not adopted the ABA’s Model Rule, to-date, 39 other states have amended their rules to specifically require technology competence. Given this wide-sweeping adoption, it is foreseeable – if not inevitable – that Alabama will ultimately amend its current rule to impose a specific obligation of technology competence on the part of lawyers admitted to practice in this State. See “Lawyers’ Duty of Technology Competence by State in 2021”, Percipient Blog (March 21, 2021), <https://percipient.co/lawyers-duty-of-technology-competence-by-state-infographic>.

³ In *Hartman v. State*, for example, the defendant appealed the trial court’s denial of his motion for a new trial following his conviction for the crimes for which he had been charged. As grounds for his ineffective-assistance-of-counsel argument, the defendant asserted that his counsel should have been more familiar with the courtroom technology and should have used that technology. 858 S.E. 2d 39 (Ga. App. March 3, 2021). The defendant maintained that in failing to do so, his attorney did not adequately cross-examine the victim. *Id.*, at 48. The Georgia Court of Appeals affirmed the conviction, citing defense counsel’s extensive cross-examination of the victim and his impeachment of her on several fronts. *Id.* Notwithstanding, this case is just one of many (including civil actions) which evidences an increased level of awareness of courtroom technology and a corresponding increase in expectations that attorneys know how to use it, and use it at trial.

⁴ By way of example, scheduling orders in civil cases issued by Baldwin County Circuit Court Judge Jody Bishop include the following provision which he enforces: “AUDIOVISUAL EQUIPMENT IS AVAILABLE IN THE COURTROOM AND SHALL BE USED IN LIEU OF BLOW-UPS AND CHARTS.” (Bold, all-caps emphasis in original).

⁵ See Cook, Katrina, Ph.D., and Keith Pounds, Ph.D., “Adapting Advocacy for the Post-Pandemic World”, Litigation Insights Blog (July 29, 2021), <https://litigationinsights.com/adapting-advocacy-post-pandemic>.

⁶ *Id.*

⁷ The U.S. District Court for the Southern District of Alabama’s website contains detailed information about the technology available in all 6 courtrooms, including computer audio/video inputs; document cameras; evidence monitors; technology lecterns; touch-screens; portable technology carts; video-conferencing equipment, and more. See <https://www.alsd.uscourts.gov/courtroom-technology>.

⁸ The Middle District offers attorneys training on its evidence presentation equipment. Training sessions can be scheduled with the Court’s IT department here: <https://www.almd.uscourts.gov/about/technology-and-training>. Additionally, the Middle District has published a “Courtroom Technology Reference guide”, a PDF of which you can download here: <https://www.almd.uscourts.gov/files/courtroom-technology-reference-guide.pdf>.

⁹ For the procedural requirements mandating the submission of exhibits electronically or via digital media applicable to all civil cases in the Northern District, see *Administrative Procedures for Filing, Signing, and Verifying Pleadings and Documents in the District Court under the Case Management/Electronic Case Files System in Civil Cases* (May 18, 2021), § IV.C.1 - 6, at pp. 17-18, a copy of which you can view and download at: <https://www.alnd.uscourts.gov/sites/alnd/files/AL-N%20Civil%20Administrative%20Procedures%20Manual.Revision.05-18-2021.pdf>. For an example standard order which sets forth the requirements for attorneys who want to present exhibits via a projector onto a screen or monitor, see Honorable District Court Judge Abdul K. Kallon’s “Standard Pretrial Procedures – Exhibit A”, ¶ 3(g), available to view and download at: <https://www.alnd.uscourts.gov/sites/alnd/files/forms/AKK%20Standard%20Pretrial%20Procedures%20-%20Exhibit%20A.pdf> (“[c]ounsel are responsible for providing whatever technology may be necessary for such projection”).

¹⁰ <https://alafile.alacourt.gov/frmLogin.aspx>.

¹¹ *Id.*

¹² <https://www.youtube.com/embed/yHkLeIBB2Y?autoplay=1&rel=0>

¹³ See “Announcing ExhibitsPad – An Exciting New App From LIT SOFTWARE!” (May 8, 2021), <https://www.litsoftware.com/blog/2021/5/5/announcing-exhibitspad-an-exciting-new-app-from-lit-software>.

¹⁴ Upload files to TrialPad on your iPad using a Lightning to USB Camera Adapter (\$39.00 on the Apple Store, <https://www.apple.com/shop/product/MK0W2AM/A/lightning-to-usb-3-camera-adapter?fnode=f3d1988b-3d12849e9bcd963a085a58ce6cd577bc8e16cddb35a2d1df7a61ed10e6cf-b0e395a774d9b9d5a6ae3fab5312600edacccb65f169b4a79a0b2471a31db3730af8c-96381587cc7b1efb484addc628fd77efa1913912ef5460f9d0fe2d1>).

¹⁵ Tara Cheever of Lit Software noted in a recent video podcast interview that the company tested its newest app, ExhibitsPad (discussed later in this article), in a jury trial in Miami, where each juror was provided an iPad with all exhibits uploaded to them for use during deliberations. Tara said it took her less than 10 minutes to upload the exhibits in this document- and media-intensive case to all 11 iPads via USB! See Brett Burney, “AIL040-Tara Cheever from LIT SOFTWARE Discusses Effective Presentations, App Updates, Brand New ExhibitsPad App, and Why Subscriptions Produce Better Apps! [Developer’s Edition]” (July 8, 2021), <https://appsinlaw.com/ail040-tara-cheever-from-lit-software-discusses-effective-presentations-app-updates-brand-new-exhibitspad-app-and-why-subscriptions-produce-better-apps-developers-edition>.

¹⁶ Jeff Richardson, “Review: TrialPad – present evidence from your iPad”, iPhoneJD (May 16, 2019) (https://www.iphonejd.com/iphone_jd/2016/05/review-trialpad.html); see also, Jeff Richardson, “Review: LIT SUITE – powerful iPad litigation apps”, iPhoneJD (Feb. 24, 2021), https://www.iphonejd.com/iphone_jd/2021/02/review-lit-suite.html (for Richardson’s updated review of TrialPad).

¹⁷ Apple’s Peer-to-Peer AirPlay feature enables you to present wirelessly from an iPad without a WiFi connection. For a short, simple explainer on setting up and using Peer-to-Peer AirPlay, visit <https://support.apple.com/en-us/HT204289>.

¹⁸ See n. 16, *supra*.

¹⁹ Jeff Richardson, “Review: LIT SUITE – powerful iPad litigation apps”, iPhoneJD (Feb. 24, 2021), https://www.iphonejd.com/iphone_jd/2021/02/review-lit-suite.html.

²⁰ *Id.*

²¹ “Double Your Productivity in TranscriptPad!”, Lit Software Blog (Aug. 12, 2021), <https://www.litsoftware.com/blog/2021/8/2/we-just-doubled-your-productivity-in-transcriptpad>.

²² Jeff Richardson, “Review: DocReviewPad – review and annotate documents on the iPad” iPhoneJD (July 7, 2015), https://www.iphonejd.com/iphone_jd/2015/07/review-docreviewpad.html.

²³ See n. 15, *supra*.

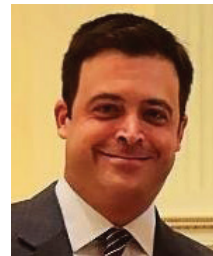
²⁴ Jeff Richardson, “Review: ExhibitsPad – an electronic exhibit binder for factfinders”, iPhoneJD (May 11, 2021), https://www.iphonejd.com/iphone_jd/2021/05/review-exhibitspad.html.

²⁵ Guided Access limits the iPad to a single app (here, ExhibitsPad). To turn on Guided Access, simply go to Settings > Accessibility, and turn on Guided Access. Next, tap Passcode Settings and then Set Guided Access Passcode. Enter a passcode and confirm it. See “Use Guided Access with iPhone, iPad and iPod touch”, Apple Support, <https://support.apple.com/en-us/HT202612> (accessed on Sept. 2, 2021).

²⁶ See Jeff Richardson, “Review: ExhibitsPad – an electronic exhibit binder for factfinders”, iPhoneJD (May 11, 2021), https://www.iphonejd.com/iphone_jd/2021/05/review-exhibitspad.html.

²⁷ For example, in *Sherrer v. Bos. Scientific Corp.*, the plaintiff appealed a defense verdict following a nearly four-month jury trial. 609 S.W. 3d 697 (Mo. 2020). Of the four grounds comprising the plaintiff’s appeal, the appellate court devoted particular attention to the plaintiff’s argument that the trial court erred in not granting her motion for a mistrial after information was presented to the jury regarding her pre-trial settlements with two dismissed defendants. *Id.* At trial, while cross-examining the plaintiff, defense counsel displayed a PowerPoint slide on a 20-by-20 foot screen and multiple monitors that was not admitted into evidence, and was used solely as an aid to the jury. 609 S.W. 3d at 715, 720 (Mo. 2020). After a few brief questions, the trial court judge directed defense counsel to take down the slide. *Id.* It was during the sidebar that followed that defense counsel first realized that the slide included a text box in the lower right corner describing a settlement with the two dismissed defendants. *Id.* The plaintiff moved for a mistrial on the grounds that the reference to settlements in the PowerPoint slide violated the trial court’s rulings excluding any reference to prior settlements. *Id.* After a discussion with counsel, the trial court judge ultimately denied the plaintiff’s motion for a mistrial. *Id.*, at 715-716. In a *per curiam* opinion, the Supreme Court of Missouri ultimately affirmed the judgment, but the risk of reversal, coupled with the time and expense of the appeal and of potentially re-trying a four-month long case, serve as a strong reminder of the importance of reviewing each of party’s respective trial exhibits, including your own, multiple times before trial. *Id.*, at 716.

²⁸ See, e.g., the recent case of *United States v. Barrow*, Criminal 20-127 (CKK) (D.D.C. Aug. 13, 2021). In *Barrow*, the defendant appealed unanimous verdicts convicting him of wire fraud crimes following an eight-day trial which took place in June 2021 during the COVID-19 pandemic. *Id.* Specifically, the defendant sought a new trial based on numerous grounds, all of which related to “alleged shortcomings in the Court’s technology – none of which Defendant’s counsel or Defendant alerted the Court of or objected to before or during trial...” *Id.* (Italized emphasis in original). (The Court noted one glitch that occurred when “one of the jurors seated on the back row of the gallery indicated that he could not clearly see the text of an exhibit... on the monitor in the front of the gallery.” *Id.* However, the courtroom technology specialist remedied this issue by setting up an additional monitor closer to that juror. *Id.*)



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GERALD C. SWANN, JR.
President

As I begin to serve as your president, I am both honored and humbled. It is incredibly gratifying to hold this position as a result of the trust and confidence of my peers. I would be remiss not to acknowledge the exemplary leadership and dedication of our two most recent presidents, **Christina Bolin** and **Andy Rutens**, along with **Jennifer Hayes**, our executive director. Over the past two years, our association has

faced many unexpected challenges, to which Christina, Andy, and Jennifer managed with resiliency and flexibility. Through their efforts, our association did not simply survive, but prospered and offered more membership benefits and services. While I certainly hope I am not faced with anything close to what they had to navigate, I am confident in the changes and modifications that have been implemented, and for which I can rely.

Congratulations to **Jennifer Hayes**, Executive Director, **Gaby Reeves**, Journal Editor, and the entire editorial board. The Spring Journal publication received the 2021 APEX Award for publication excellence in magazines, journals, and tabloids print over the 32 pages. The APEX Awards are an annual competition for corporate and nonprofit publishers, editors, writers, and designers. Nearly 1,200 entries were considered for recognition this past year. This is the first time the Journal has received the award.

Although ADLA was formed in 1965, it was not incorporated until 1982. In Article III of the Bylaws, the first two stated purposes of ADLA are:

1. To bring together by association, communication, and organization lawyers of Alabama who devote a substantial amount of their professional time to the handling of litigating cases and whose representation in such cases primarily for the defense.

2. To provide for the exchange among the members of this association of such information, ideas, techniques of procedure, and court rulings relating to the handling of litigation as are calculated to enhance the knowledge and improve the skills of defense lawyers.

The stated purpose of ADLA is to serve its members. In order for ADLA to fulfill its purpose, it requires the engagement and involvement of its entire membership. In addition to taking advantage of the services ADLA offers, this includes participating in ADLA's various programs, serving on

committees, and contributing to publications. I encourage you to take on the challenge of seeking opportunities to volunteer and serve, while also accepting any requests to serve.

FOCUS ON MENTORING

Proverbs 5:26:6 reads, "Train a child up in the way he should go and he will not depart from it." This instruction is certainly good advice for parenting. By the same token, it is also applicable to the training and nurturing of young lawyers so as they mature, they will have the skills, knowledge, and temperament to be successful. When training young lawyers, it is imperative to exercise creativity and availability, encourage mentorship beyond individual firms, and to revitalize ADLA's role in mentorship.

As I began practicing law in the summer of 1986, I was immediately introduced to a unique process of mentoring and training by veteran lawyers. A notorious research project assigned by John Matthews comes to mind. Initially this in depth project seemed nonsensical and irrelevant to the case I was working on. I would later discover his complex assignment acted as preparation to better handle issues that might arise in the future. Tabor Novak allowed me to participate in the preparation for an upcoming trial, only to learn that the testimony would be unnecessary. On a regular basis, Richard Ball came to my office to go over the cases he assigned me, offering his insight to additional work that needed to be done. Winston Sheehan consistently reviewed numerous drafts and rewrites of pleadings, motions, and discovery responses to ensure the writings were refined and concise. Each of these lawyers were innovative in their teaching and took time from their own practice to not only listen to questions, but to provide guidance and perspective on how one should be a lawyer. The advice was instructional and positive. Consequently, there was also constructive

correction to show how mistakes and errors should be avoided. At times the instruction and correction could be somewhat hard to take. However, the sole purpose of the interaction, correction, and instruction was to assist my growth as a lawyer. The goal and intent was to prepare me to properly and effectively represent my clients.

A discussion with a fellow lawyer and friend left with me a lasting impression and realization; we must do a better job of implementing a mentorship plan (program/or procedure) that resembles the one we were the beneficiaries of. As I have interacted with lawyers of my generation, we frequently share stories of the attorneys who shaped, molded, and taught us the meaning of being a litigator. Now it is our turn, myself included, to continue the tradition of mentoring, and to meet and exceed the standards which we were fortunate enough to enjoy. When assigning an associate a project, take the time to review any unsatisfactory work. The easiest way to fix an incomplete and lacking work

A discussion with a fellow lawyer and friend left with me a lasting impression and realization; we must do a better job of implementing a mentorship plan (program/or procedure) that resembles the one we were the beneficiaries of.