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# GP | Solo

ABA General Practice, Solo & Small Firm Section

## GPSolo Magazine - June 2004

### ROAD WARRIOR

#### Stayin' Alive!

By Jeffrey Allen

This month we are focusing on backup plans for the use of technology in courtroom (or other professional) presentations. Most of you already know that an increasing number of attorneys have begun using presentation technology to enhance their work in the courtroom, at arbitration hearings, at mediation conferences, and in other professional settings. Many of you already use such technology yourselves. Others have had it used against you. Sooner or later you will find good reason to embrace it.

Although never codified, Murphy's Law remains valid in all 50 states' court systems, as well as the federal system. Simply put, Murphy's Law states the proposition that anything that can go wrong will go wrong. Nowhere does Murphy's Law have a stronger presence than in the use of computers and other modern electronic technology.

History has shown us that as technology evolves it generally becomes more stable and reliable. Years ago, when I first started traveling with a laptop computer, I had to deal with numerous computer breakdowns or failures to operate as expected (and as needed). Invariably, those failures would occur at the most inopportune times. In those days, backup sufficient to keep you going on the road was almost impossible. As storage devices grew larger in capacity and smaller in size, it became continually easier to protect against the effect of a catastrophic failure or even some aspects of the loss from the theft of a computer. At the same time, com-puter manufacturers built more rugged and damage-resistant hardware, and software developers produced more stable operating systems. As a result, I have now gone for almost five years without having a laptop computer failure on the road. Nevertheless, remembering the bad old days, and always vigilant against the application of Murphy's Law, I religiously back up my work.

Similarly, and as you would expect, the technology we use in courtroom presentations has become more compact and less susceptible to failure in recent years, but it is still relatively fragile. When we plan on using such technology, we must anticipate its possible failure and have a solid backup plan in place. Think of it as "crisis response planning." After all, the "show" must go on!

#### First-Line Backup Plans

Although a good trial lawyer may have the ability to shift gears quickly when necessary, most of us prefer to go with our original game plan when it comes to our trial presentations. If we planned on using multimedia presentations and presentation technology in the trial, we will want to present the trial using that technology. Accordingly, the first line of defense to a

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Murphy's Law failure should focus on keeping that plan online.

The basic hardware for courtroom presentation technology consists of a computer, a projector, a screen or monitor for the projected image, and possibly a document camera. The piece of equipment most likely to fail is the projector, and the projector lamp will present the most frequent cause of that failure. Accordingly, plan on having a backup for the projector lamp. If the court will provide the projector, most likely they will have a backup lamp, but not a backup projector (of course, that's worth checking out ahead of time). Accordingly, if the projector fails in some way other than the lamp, you will be up the proverbial creek— *unless* you planned ahead by either renting a backup projector or bringing one that you own with you to court. Having a projector lined up as a backup also makes good sense from another perspective. Many courts have limited projection facilities and assign them on a first-come, first-served basis. If you plan on using the court's equipment and the court has none available, you will need to supply your own or not use the presentation technology in your trial.

The next most likely failure will affect the computer. Computer failures come in four basic varieties: (1) hardware failure; (2) operating system failure; (3) software program failure; and (4) data loss. You can easily deal with all these threats through a simple backup and emergency procedure: (1) Get a high-capacity, smallfootprint hard disk, preferably with a FireWire or a USB 2.0 connection. (2) Format the hard disk and install your operating system. (3) Set the computer to boot to the external hard disk and reboot the computer. (4) Install the required software programs for your presentation as well as basic word processing, time and billing, contact management, and any other software you regularly use. You will also want to install disk repair utilities. (5) Copy the data files you need for your presentation and trial to the hard disk.

Take the backup/emergency disk with you to court. Now if you have a problem with your data file, you can immediately replace it. If you have a problem with the program on the computer, you can run the program from the hard disk. If the operating system fails for some reason, you can boot to the hard disk and have a new operating system, complete with software and data, in short order.

If you have a computer hardware failure other than the hard disk, you can attach the emergency/back up disk to any other computer that can run on the same operating system and boot to it. Once you do that, you are back in business again.

As an additional precaution, you might also want to acquire a USB flash drive and load a copy of your trial-related data and files on it (as well as copies of such things as PowerPoint presentations). This gives you the security of a second backup copy of your trial data and an easy way to restore the data, replace a corrupted file, or move the critical data and files to another computer containing the required software.

As a practical matter, these precautions should take care of the overwhelming majority of problems you are likely to encounter in connection with using presentation technology in court.

### **Worst-Case Scenarios**

Because of our obligations to our clients, attorneys need to anticipate and prepare for those situations when Murphy's Law runs rampant. What happens, for example, when your computer fails and you cannot locate a second computer, or the second computer fails and you cannot locate a replacement? What happens if the projector fails and cannot be induced to work or is unavailable and you cannot find a replacement? For planning purposes, this is the worst-case scenario. How do you protect your client's interests at the trial or hearing when it becomes your reality?

Trying to salvage your technology-oriented presentation under these circumstances may be difficult, if not impossible. I have heard of attorneys showing their presentations to the judge and/or jury on their laptop monitors. While I have not personally had that experience in court, I have done that in connection with a conference when the projector was indisposed. While not as elegant as the big screen, such an approach can work, if you get a sympathetic

judge, arbitrator, or hearing officer. In case you don't (remember Murphy's Law), you need a better worst-case scenario plan.

Your worst-case scenario plan should keep you out of trouble by ensuring that you are in a position to commence and/or complete the case if technology fails you utterly. When creating your plan, use the principle of "Kiss" (Keep It Simple, Stupid). The simpler you keep it, the better. I generally use the same worst-case scenario plan all the time: Bring hard copy of whatever you plan on using in the trial. That includes everything from evidentiary documents to PowerPoint presentations. I like to bring two copies (or the original and a copy when it comes to evidentiary documents). Despite any stipulations that you may have respecting the use of electronic copies of documents as evidence, if the electronics fail, you can always do it the old-fashioned way and introduce the physical documents into evidence (some courts may require this anyway). By having the original documents with you, you enable yourself to address the issue of a court requiring the marking of physical documents as evidence; you also protect your client's position by ensuring your ability to proceed with the trial even in the face of a technological breakdown.

If you have a document camera and a functional projector, you can still use presentation technology to expedite the trial and enhance your presentation. Documents can be displayed on-screen through the document camera. If you have a copy of the document available, you can manually mark up the copy on-screen to highlight specific portions or identify specific provisions, exactly as you might have done with your computer. While you probably won't have presentation boards prepared with blow-ups of portions of documents or pictures, you can accomplish the same effect through the use of the document camera again (if one is available). Similarly, if you print out a copy of a PowerPoint presentation you plan on using and bring it with you to court, you can make the same basic presentation by manually placing the pages under the document camera and projecting them on the screen visible in the courtroom.

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