THE TRIAL LAWYERS TOOLBOX:
TECHNOLOGY TOOLS FOR LITIGATION

BRETT BURNEY
Burney Consultants LLC
www.burneyconsultants.com

MARK I. UNGER
The Unger Law Firm
www.unger-law.com

HON. EMILY MISKEL
470th District Court, McKinney, Texas

State Bar of Texas
TECHNOLOGY FOR LITIGATORS
October 25, 2016
Houston

CHAPTER 7.2
The Trial Lawyers Toolbox: Technology Tools for Litigation

TexasBarCLE
October 25, 2016

Brett Burney
Burney Consultants LLC
www.burneyconsultants.com

Mark I. Unger
The Unger Law Firm
www.unger-law.com

Hon. Emily Miskel
470th District Court, McKinney, Texas
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>INTRODUCTION</td>
<td>1</td>
</tr>
<tr>
<td>BEST TRIAL APPS, EARLY 2016 EDITION</td>
<td>4</td>
</tr>
<tr>
<td>ACCESSORIES</td>
<td>7</td>
</tr>
<tr>
<td>LEGAL RESEARCH</td>
<td>11</td>
</tr>
<tr>
<td>JURY SELECTION</td>
<td>12</td>
</tr>
<tr>
<td>EVIDENCE PRESENTATION</td>
<td>12</td>
</tr>
</tbody>
</table>
Introduction

When it comes to litigation technology, lawyers have rarely had it better. Never has there been such a wealth of great tech options for presenting evidence in trial, reviewing documents, and taking depositions. In this paper we will provide an overview of many of the tools lawyers are using in litigation, no matter the size of the firm or lawsuit.

We freely admit that we are somewhat biased in favor of using the iPad as a primary litigation technology. As we describe further below, the iPad makes it easier for any lawyer to take a case to trial, without the need to hire trial technologists or bring associates or assistants along at the client’s expense. Although our presentation will focus on the ways lawyers can use an iPad to their advantage in litigation, we’ll also cover some of the sophisticated tools lawyers are using to review documents and present evidence at trial, and we’ll spend some time discussing the accessories you’ll need to bring to court to make sure your technology works as planned.
**Why the iPad?**

When we give presentations on the iPad, one of the first questions people ask is, “Why the iPad? Why not use an Android tablet or one of those new Surface Pros to try a case?”

It’s a good question, and here’s our answer. If you are going to trial and have the budget or resources to have someone else operate the technology for you, you have a number of options for trial presentation tools, including very powerful applications like TrialDirector and Sanction. If you are trying a case by yourself, or do not have the budget to hire a technologist, you want to select technology that is 1) easy to use and 2) does not distract you from your most important job: representing your client.

Android tablets really are not an option, because developers just aren’t creating legal apps for the Android platform. There are a few available options, but none are very good. The Microsoft Surface Pro 4 is a great tablet, and it runs Windows and full versions of your favorite applications – including full versions of Trial Director and Sanction. But therein lies the problem; these programs are complicated and not easy to use, and you will definitely get distracted attempting to use these programs and try a case at the same time.

Enter the iPad. The iPad’s apps are powerful, but not too complicated. They are just simple enough to use at trial, and still focus on the job of representing your client. If you are trying a lawsuit on your own, or if your budget doesn’t warrant someone else at trial to help with technology, the iPad is your best bet.

**Which iPad is Best?**

But which iPad should you choose? As of this writing, there are three iPads available: the iPad Mini (7.9” display), iPad Air 2 (9.7” display) and the new iPad Pro (12.9” display). (By the time of our presentation, Apple may introduce a new, 9.7” iPad Pro). The iPad Mini is great for reading books or consuming other information, but it is really too small for use in the courtroom. The iPad Air 2 is a good “in-between” size; it works well in the courtroom, and it’s just small enough to work as a content consumption
device when you’re not at work. It’s also cheaper than the iPad Pro, which can set you back more than $1,000 with all the accessories. But the iPad Pro may actually be the best iPad for litigators at this point, specifically because its screen is so big. You can show two different windows side by side, so you can present evidence with one app while reading your notes or examination outline with the other. (The iPad Air also allows for side-by-side apps, but the screen is much smaller.)

Apple is pushing the iPad Pro as a “laptop replacement,” and with its size and speed it certainly matches up to many laptops out there today. However, it cannot run full versions of Word, Excel, PowerPoint, Adobe Acrobat, or other programs important to lawyers. That said, it will definitely make a great litigation tool.
Best Trial Apps, Early 2016 Edition

If you want, you could actually use an iPad for the life of a lawsuit, from case intake through trial. There are apps to handle most of the phases of the average lawsuit, although you will want to keep a laptop or other computer around for heavier work on documents. Most of the apps we describe here have been around for some time, while several are brand new. All of them get good reviews from litigators.

Case Intake

When a new case walks in the door, lawyers are often engaged in the same activity: collecting information. This might be a matter of taking notes, creating documents, or just doing some straight data entry. The iPad has you covered in all three areas.

Note-Taking. If you are a legal pad type of lawyer, you’ll want to get a good stylus (more on that later) and find a note-taking app that allows handwriting. One of our favorite apps for pure note-taking is Noteshelf. It provides a simple but powerful notebook, with lots of options for pen size and color.

When it comes to both text and handwritten notes, nothing can beat Microsoft’s OneNote app. You can set up a notebook for each trial, with tabs in the notebook for Client Information, Discovery, Deposition Notes, Trial Testimony, and more. You can record audio or embed video, and you can easily tag your notes with issues you want to track. The best part about OneNote is that it synchronizes to all other copies of the app – so
you can have OneNote on your desktop, laptop, tablet, and phone, and access your notebooks from all of these locations.

Many lawyers are also starting to use Evernote for note-taking, although it’s more of a “digital memory” for websites and other notes you may want to keep. Evernote is similar to OneNote in that you can create notebooks and enter either handwritten or text notes in them. The synchronization features are also good, meaning you’ll have access to your notes on every device you own.

**Creating Documents.** If you use Microsoft Office, there’s really only one choice for creating and editing documents on the iPad: Microsoft Office for iPad. Word, Excel and PowerPoint have been adapted for use on the tablet, and while you won’t find every feature in the desktop version, you’ll find enough to get serious work done. The apps are free to download, but full use of them will require a subscription to Office 365, which starts at $99/year. We highly recommend Office 365 — the Business subscription is $150/year, and comes with 5 licenses for all Office applications.

If you’re a WordPerfect user, we are sorry to say your choices are limited. WordPerfect released an app in 2014, but it isn’t very good.

**Documents and Depositions**

Once your case swings into motion, you’ll be conducting discovery, with document production, depositions, and other types of information-gathering. While the iPad is a good device for reviewing documents, it’s still maturing as a tool for reviewing large amounts of documents.

**Document Review.** Many documents arrive in the form of PDF files, which make them easy to review and annotate on the iPad. There are several great PDF apps, but our favorite is PDF Expert, which has just enough features but not too many to be overwhelming. You can create folders of PDF files through your file sharing tool of
choice (Dropbox, Box, WebDav, FTP, etc.), and keep those files constantly synchronized between the iPad and source folders. There are good tools for annotating documents; you can also add signatures to documents, so either you or your client can sign pleadings, discovery or affidavits and easily mail them out.

If you want to be able to code documents, or conduct a Privilege / Responsiveness review, your options are more limited. Some companies that offer online review tools have companion iPad apps, but you must be using their service to take advantage of the apps. One good example is Relativity Binders – Relativity is a great review tool, and the app allows you to download a subset of your documents to your iPad for review.

For those of you who don’t want to hire an outside vendor for reviewing services, your best bet at this point for the iPad is DocReviewPad. You can upload files and apply issue codes as well as privilege / responsiveness tags to each document. The app also has basic annotation tools, but this is very much a new product. we hope the app improves over time as users offer feedback on its functionality.

**Depositions.** Just about every court reporter offers an iPad app where you can schedule or review depositions, but most of these are pretty primitive. The absolute best app for both reviewing and annotating depositions is TranscriptPad, from the same folks who brought you DocReviewPad, above. The layout is similar; you download deposition transcripts (TXT files only) to your iPad, and you are able to assign issue codes to testimony, as well as highlight or flag relevant passages. After you're done
reviewing the deposition, you can send a report to your client or others, or even export your deposition excerpts to programs like Sanction or Trial Director.

One interesting app worth trying is eDepoze, a subscription service that makes it easy to use and share digital exhibits. Just upload your exhibits to the service, and everyone (co-counsel, opposing counsel, and the witness) can access and annotate them from an iPad or web interface.

**Accessories**

We could cover hundreds of accessories, and still not make it through all of the **stuff** that has been created to use with the iPad - cases, keyboards, styli, and more. And that’s just the iPad Air 2 – we can expect many more keyboards and style to work with the iPad Pro as well. Here are a few of our favorite examples.

**Cases.** There are dozens and dozens of cases available for the iPad these days, in varying types and sizes. Just Google “best iPad cases,” and you’ll find a ton of articles featuring great iPad cases - almost all of them different. It’s also hard to recommend a case, because it’s one of the more personal decisions an iPad owner makes; you not only have to decide how you want to protect your mobile device, but you also have to decide whether the case should have some level of style. Some sacrifice security for looks, and vice versa – we’re not about to get in the way of your personal preferences when it comes to cases. When you shop for a case, however, just don’t buy the first one you see - take your time to see a few examples, because the minute you buy one you like, you’ll find another one you like better.

That said, we’ll name our favorite cases so you can at least have a point of reference. We are partial to the “less is more” approach when choosing an iPad case, and go for the solution that is the slimmest. This means the simple **Apple Smart Cover** - it’s a great cover for the screen, and it keeps the iPad nice and streamlined. Of course, this means the back goes unprotected, so you have to take care not to drop your iPad when out and about. But if we had to choose a case with a back to it, we would stick with Apple and
choose the **Apple Smart Case**. Other favorite cases are made by **Incipio** - the company makes some of the slimmest cases around, which still provide good protection in case of a fall.

**Keyboards.** Every iPad user needs a keyboard at some point - you will want the ease of keyboard when you need to write a longer-than-average email, or work on a document. It’s just so much better than the hunting-and-pecking that goes on so often when using the onscreen keyboard. The main question you should ask when considering a keyboard is: full-size, or iPad size? If you want a full-size keyboard - and really, you should have one - the only choice is the **Apple Wireless Keyboard**. It’s slim and lightweight, so it will fit in your bag quite nicely. And because it’s full-size, your fingers will have less trouble finding the right keys.

It is nice, however, to have a keyboard that fits your iPad, because it can be a pain to carry around both a tablet and full-size keyboard. A favorite of many lawyers is the **Logitech Ultrathin Keyboard**. It’s described as “the other side of your iPad,” which could not be more appropriate; the keyboard is about the same width as an iPad, and it connects snugly to the tablet via the magnetized hinges on one end. When you’re ready to get to work, there’s a slot in the keyboard that holds the iPad in place. Yes, the keyboard is slightly smaller than a full-size keyboard, but you get used to it. And although the case does protect the screen when connected to the iPad, this keyboard should never be mistaken for a safety case. If you drop the iPad, the keyboard will likely come loose and leave the iPad to fend for itself.

If you spring for the iPad Pro, you’ll likely be using a different keyboard. Apple makes a **Smart Keyboard** that sells for $169, but there are will likely be less expensive alternatives – the **Logitech Create** gets good reviews.

**Styli.** For those of you who look at the iPad as an electronic version of your legal pad, a good stylus is a must. This time last year, we would have recommended a rubber-tipped stylus as one of our favorites. But now we are convinced that the rubber tip is a thing of the past. Today’s styli have tips that look and feel like real pens, and work much the same.
There are a number of Bluetooth-enabled styli slowly making their way to market. These devices use Bluetooth LE (Low Energy), which connects to your iPad using considerably less power than regular Bluetooth. It enables the stylus to interact with the iPad screen to place the ink more precisely, which is then supposed to deliver a finer, controlled writing motion. Where a normal rubber tip may measure 6 millimeters across, the new Bluetooth LE tips can measure as little as 2 millimeters across, much like a true ballpoint pen. Two things to remember about this type of stylus:

- Because it has more technology installed into it, you will necessarily pay a bit more to use one.

- They work best with apps that are configured to use them, and so far that’s not many apps. They still do work with other apps - just not as well.

We like the **Adonit Jot Script 2** - the handwriting is terrific, and very precise. The only complaint is that when you are writing, you will tend to hear a lot of clicking as you raise and lower the stylus to the iPad screen. If you typically write in a steady motion without raising your hand, then you won’t notice this as much.
With the debut of the iPad Pro, Apple released **Pencil** a simple but very powerful stylus that is getting rave reviews. Unfortunately, it only works with the iPad Pro; but if you *do* have an iPad Pro, it’s probably the best stylus to use.

**Connections.** As nice as it is that the iPad is a small mobile device, you'll need to invest in some connections for it, especially if you plan to give presentations or use the iPad in court. Don’t worry, we won’t load you down with extra stuff; you really only need one or two extra accessories to use to connect your iPad to televisions, projectors, or other broadcasting devices.

A must-have accessory is the **VGA Adapter**, to connect your iPad to a projector with a VGA connection. Most court houses still use VGA projectors (as do most hotels, where we give a lot of presentations), so having this little connector in your bag is a no-brainer. The **Lightning-to-VGA adapter** is made for newer iPad models; if you own an older iPad, use the **30-Pin-to-VGA adapter**.

The problem with the VGA adapter is that it is *very* short. So short that it will keep you tied down to the projector, or very close to it. You can always get an extension cord with VGA plugs at each end - many electronic stores will sell 15-foot cords for a
reasonable price. But why would you want to wander around a courtroom - or any room - with a cord that long dragging behind you? We prefer to go wireless when we give presentations, whenever possible - and one of the best ways to do that is using the Apple TV.

The Apple TV is primarily used as an entertainment hub - you can stream movies, television shows, music, or photos to your television screen. With the advent of AirPlay technology, your iPad or iPhone can now connect to the Apple TV, which will mirror whatever’s on your device screen to a television. It’s really liberating to walk around a courtroom or conference room with your tablet and no wires; you can give your presentation from any place in the room! Check out Trial Presentation with an iPad and Apple TV (http://bit.ly/1QpidTq) at Lawyerist for a good step-by-step guide for setting this up.

If your projector doesn’t have an HDMI port, or if you don’t want to get an Apple TV, try AirServer. It’s a $14.99 download to your laptop, and setting it up is easy. Just install it to your laptop, then connect the computer to the projector via a VGA adapter. Once you see your computer screen displayed by the projector, bring up the Control Center on your iPad, and press AirPlay. Your laptop should be listed there; slide the Mirroring option to On, and your iPad screen should display on your laptop – which means it’s also on the projector screen, too. You’re now presenting wirelessly!

Legal Research

One of the best reasons to use an iPad in court is that you have access to your entire legal research library, right in the courtroom. Here are the must-have apps to round out your research tools:

- WestLawNext or LexisAdvance – if you are a WestLaw or Lexis subscriber, these apps provide excellent mobile access to those services.
- **Fastcase** – because the State Bar offers Fastcase as a member benefit, there’s no excuse not to download this app. While you can’t use the Shephard’s® or KeyCite® tools of WestLaw or Lexis, you have access to all the case law you need, and it’s hard to argue with the fact that it’s free to use.

- Statutes and Rules. In the App Store, search for “Virginia legal” to get a list of the statute and rules apps available in your area.

## Jury Selection

This section will be short, because jury selection apps have not become very popular. That’s a shame, because the idea of using an app to keep notes during jury selection can be very appealing. Unfortunately, jury selection apps work best when you receive the list of panelists some time before you start *voir dire*. If you receive the list fifteen minutes before they walk into the courtroom – which happens in many cases – you just won’t have enough time to enter in all the juror information.

But if you *do* have sufficient time, we recommend **JuryStrike** or **iJuror** for jury selection. You can enter and review juror information, store your *voir dire* questions, and even rank panelists based on their answers to those questions. It’s the digital equivalent of taking a legal pad and drawing a grid, and given enough time it works really well.

## Evidence Presentation

Once you’re in the courtroom, we recommend you use only a few apps, 3 at the most – using more apps will become confusing and distracting. Those apps are 1) PowerPoint or Keynote – whichever presentation app you like best; 2) an evidence
presentation app; and 3) your favorite PDF app, if you prefer to use that instead of an evidence presentation tool (we will both argue that the evidence presentation app is a much better choice, because it has so many more features that are suited to the courtroom). You’ll want PowerPoint or Keynote for the parts of your trial that need to be prepared and static – generally Opening Statement, sometimes Closing, and even sometimes for direct examination of a witness. Both of these apps are good at what they do, and both work well on the iPad.

For evidence presentation, the favorite app of most litigators is **TrialPad**. It is an easy-to-use but very powerful tool that allows you to show documents, images, videos, and audio without a lot of complexity. You’ll need to spend some time at the office loading your files into TrialPad and organizing your trial folders, but the app itself is really straightforward and simple to use.

If you happen to use Trial Director on your desktop or laptop for evidence presentation, then we recommend also using the **Trial Director** app, because you can easily transfer the entire case from your desktop to your iPad. As a standalone app Trial Director is average – we still recommend TrialPad if you have no other tools. But if you are using the Trial Director desktop, it just makes sense to keep consistency on the iPad.