

The iPad vs. the Yellow Pad at the ABOTA Mock Trial

by Morgan C. Smith

Owner of [Cogent Legal](#)

(Originally published in October 2011 on [Cogent Legal's Blog](#))



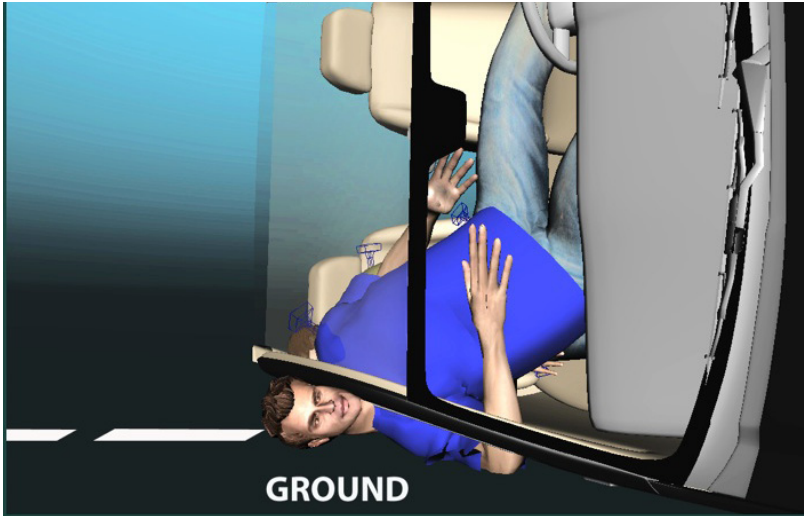
Last week, the American Board of Trial Advocates (ABOTA) put on a full one-day mock trial in San Francisco in front of a large gathering of attorneys to show how the masters of trial do their trade. The mock trial turned out to be a fascinating study in contrasts between the plaintiff and defense in terms of style—both very good, but very different—and offered lessons for trial attorneys. The opening statement, which I'll focus on here, boiled down to the iPad vs. the yellow legal pad.

ABOTA is a by-invitation-only national organization, and its members represent the cream of both the plaintiff and defense trial bar. I was asked to prepare the graphics to support the plaintiff's side of the presentation, which was an honor I greatly enjoyed.

The case, in a nutshell, involved a "whodunit" in that both sides were trying to prove the other party was driving a car they both admittedly were in. The car ran a red light, flipped on its side and led to quadriplegia of the plaintiff. Neither could recall the incident itself, but both claimed the other was driving.

The defense to this case had the favorable facts of a 20-year-old plaintiff who was illegally drinking alcohol, had a .14 blood alcohol level, was in his own truck, and at the time of the incident was not wearing a seat belt. The defendant, who also was 20, swears that although she did not remember the incident itself, she knew she was not driving immediately before it happened. The plaintiff, who had no memory of the incident, had to totally rely on forensic accident reconstruction. The defense, by contrast, had a witness to deny her involvement.

The advocate for the plaintiff, [Robert Arns](#) (my former partner) of the San Francisco-based Arns Law Firm, asked for my assistance preparing the opening. We both realized the case involved a huge amount of complicated forensic evidence that was confusing and, at times, contradictory. Since the plaintiff has the burden of proof, we had to sort out the confusion and make the case clear and compelling. Otherwise, confusing evidence inevitably would lead to a defense win.



An image excerpted from the 3D computer model prepared for the plaintiff.

I took one look at the plaintiff’s exhibits—which came from the real case on which the mock trial was based, dating back ten years—and I realized we needed some updated graphics. Using Maya software for 3D animations, we created a computer model of the vehicle and placed the two occupants in various positions as claimed by the plaintiff and the defense.

Bob and I decided to make the opening presentation for the plaintiff in [Keynote Remote](#) (similar to PowerPoint but for the Mac) so that he could use his iPad as the remote while presenting the slides. Using the iPad with Keynote allows the attorney to have a visual of both the slide that is up on the screen and the next slide that is coming up, which helps greatly for smooth transitions. Keynote also allows the presenter to have notes visible on the iPad—sort of like mini index cards on the bottom of the iPad screen and visible to no one but the presenter—so the attorney can refer to the notes as needed. Swiping the iPad screen moves the presentation from one slide to the next one.

A movie version of the entire opening is on [YouTube.com](#) if you’d like to see the presentation.

What followed, as the Hon. Judge Jon S. Tigar of Alameda Superior Court stated after the opening statements, was a “seamless” presentation that incorporated technology and, most importantly, connected with the jury. In other words, Bob relied on the Keynote presentation to walk the jury through the complicated forensic evidence, capturing their attention and dispelling their confusion, which created an intimate relationship with the jury.

The lesson for attorneys, especially on the plaintiff side: *If you have a complex case, it behooves you to break down every key forensic and liability issue into understandable parts. Use graphics to show the jury these parts—show, don’t just tell.*

Opening statement for the defense was presented by Jesse F. Ruiz of the San Jose firm Robinson & Wood. The defense goal was to establish credibility, because the defense would win if the jury believed the defendant when she said she wasn't driving. Jesse used the "yellow legal pad" approach to the opening that abstained from any fancy visuals, using only two key photographs to make forensic points. His traditional approach was very effective in creating credibility for himself and his case. However, the step-by-step visual presentation of forensic evidence by the plaintiff ultimately proved more persuasive.

Judge Tiger told the assembled attorneys that he really enjoyed the study in contrast between the two presentations and complimented both attorneys highly. He then addressed the concern that some advocates have of seeming "too slick" with a PowerPoint-type of presentation or high-tech graphics. He suggested that the "too slick" concern is no longer valid. "Every juror is probably making PowerPoints themselves, or being asked by their bosses to do so. You can't get away with that excuse," he stated.

In sum, the judge expressed that technology can be extremely effective if used well, and he held up Bob's presentation with the iPad and Keynote as an example of a well-done, seamless visual presentation.

By contrast, [a recent post on another blog](#) related a very funny story of how un-seamless and awkward a lawyer's presentation using Mac technology can be if the attorney is unfamiliar with the tech tools and unprepared to use them.

Which brings me to another take-home lesson from the ABOTA mock trial: *If you're going to use presentation tools and technology at mediation or trial, know those tools and tech thoroughly and be completely comfortable with them. Get the professional help of a legal graphics and trial tech consultant if you need it.*

Morgan Smith is the owner of [Cogent Legal](#), a legal graphics and consulting firm that helps attorneys present their cases in the most clear, compelling and tactical way to achieve maximum results. [Cogent Legal](#) integrates the legal expertise of a successful trial attorney with the creative and technical talent of a design firm.