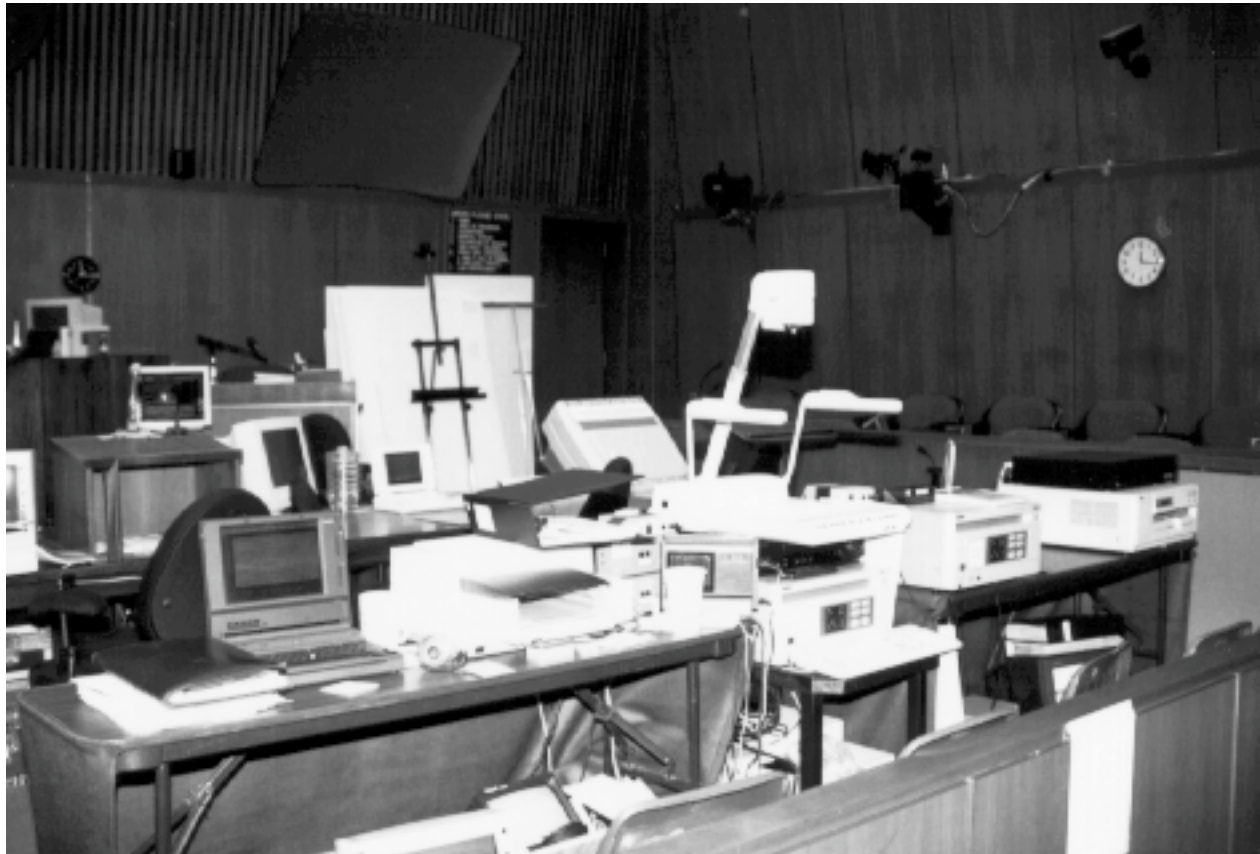


COMPUTERS AND COMMUNICATION

THE IMPACT OF TECHNOLOGY IN YOUR LAW PRACTICE



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David Randolph Smith
DAVID RANDOLPH SMITH & ASSOCIATES
611 Commerce Street · Suite 3121
Renaissance Tower
Nashville, Tennessee 37203

BellSouth Building
333 Commerce Street
Nashville, Tennessee 37203

Visual Presentation Technology

1. Laptop Usage in the Courtroom

The laptop computer has clearly come of age. High end Intel-standard PC Notebooks and MacIntosh Powerbooks now enable attorneys to literally bring their entire office (and more) into the courtroom. Apple's new "Wall Street" model provides a 14.1 inch active matrix color display, a 292 mhz 750 CPYU and a 5 gigabyte hard drive. The computer comes standard with 164 megabytes of RAM. The price of this technology does not come cheaply, however. The system costs about \$6,300.00.

Newer laptops are shipped with CD-ROM drives, and a combination Ethernet and 56 kps modem card. Enhanced lithium ion batteries also offer a 50% longer life. Laptop computers by Toshiba, IBM, Texas Instruments, Compaq and Dell (and a host of others) offer the ability to run Windows at trial. With a CD-ROM and a portable printer, such as those manufactured by Hewlett-Packard, Sharp, Canon and Pentex, a trial attorney has the ability to bring the office to the courtroom. With a cellular phone equipped with a dataport (Motorola, NEC and AT&T), from a cellular modem link (e.g., ORA 800-423-5336) the attorney can connect to the Internet, Westlaw or anything "on-line" from the courthouse.

Clearly, the attorney can fit a small, notebook-sized computer in his or her briefcase, arrive in court and have full access to on-line research tools (CD-ROM files, files and documents in the main office's computer, and current cases and documents organized and available, instantly searchable, cross-referenced and printed). Litigation software support programs can enable the trial lawyer to organize all the related case information, including evidence, discovery documents, depositions, transcripts, pleadings, interrogatories, courtroom strategies, notes and more. Many programs

include provisions for entering standard case information, such as witnesses, parties, services information, notes and case summaries. Case information becomes accessible with the use of full-text searches, where specific words or phrases can be located across all case documents, as well as abstracts of those non-text documents. Discovery Pro and Discovery ZX, for DOS and Windows, are powerful full-text manipulation tools. A McIntosh version is also available. Other products include Discovery Video ZX, a multimedia tool that combines video transcripts and Discovery base, a transcript and exhibit indexer full-text searching. Discovery ZX is essentially a text management tool designed to provide fast access to on-line transcripts and is available to many court reporters.

As we think about the future, it is clear that the computer-integrated courtroom is inevitable. Many courtrooms have already gone to a fully integrated computer approach. In Phoenix, Arizona, for example, the Federal District Court uses real time translation, which is the ability of the court reporter to use a computer-assisted stenograph machine and have the testimony of the witness appear on the computer monitor in plain English text within a matter of seconds from the time the words are spoken. The computer magic is accomplished by matching the reporter's stenographic key strokes with the same stroking already stored in the reporter's computer dictionary. This can be fed into the laptop computer's hard drive for the attorney to capture the testimony. Some courtrooms are equipped with their own computers, whereby you can bring the text of depositions, discovery summaries, legal memoranda and other trial materials to the courtroom to load the materials onto the hard drive of the computer that has been assigned to each side of the case. In Phoenix, immediately after the close of the court session, the attorney may obtain a computer disk or printed copy so that it can be used to prepare for cross-examination of a witness. Seven 10-inch

high resolution SVGA monitors are located in the jury box and there are 14-inch SVGA monitors at the plaintiff and defense counsel tables. Built into the podium is a 10-inch SVGA monitor with a bar code reader and mouse pen for use with software and a mouse pen. The courtroom is also equipped with an Elmo Visual Presenter.

High tech exhibits that are "illustrative" for the jury are more controversial. Where the explanation of what happened is based upon the trial lawyer's theory of the case rather than upon accepted scientific principles, there is a significant risk that the high tech exhibit will be excluded or modified so as not to mislead the jury. For example, in *Datskow v. Teledyne*, 91993 (W.D. N.Y.) 826 F. Supp. 677, 685, the court excluded from a high tech exhibit the voice track of the cockpit recorder recovered from a plane crash that had been recorded over a computer-generated animation of how the crash occurred because the jury might be misled. The court allowed the animation to be shown to the jury so they could understand the expert's theory, although it was not a scientific reconstruction of the crash. In *Rockwell v. DEV Industries*, No. 84C6746 (1992) WL 330356 (N.D. Ill.), a case involving misappropriation of trade secrets, the court approved the use of a computer-generated exhibit that showed the similarities of the two presses at issue but only after the proponent of the exhibit changed the labels used in the animation that could have misled the jury.

Some courts are experimenting with combinations of technology and traditional exhibits to shorten trials and make them more manageable for juries. In the trial of Phase I of 3,000 consolidated asbestos cases, *Cimino v. Raymark*, No. B-86-456-CA (ED.Tex.), the court required that the lawyers summarize testimony of witnesses in 8-10 minutes. The jury only heard the few key complete questions and answers that really made a difference. The court encouraged lawyers to edit videotapes so they would make more sense for the jury. The court allowed the parties to install state-of-the-art

computer and video display terminals to make it easier for the jury to see and hear the exhibits presented.

Some lawyers have used high tech exhibits aggressively as part of closing arguments. For example, in *Standard Chartered PLC v. Price Waterhouse*, 88-34414, Sup. Ct. Maricopa Co., Ariz., Price Waterhouse's failure to spot problems during their auditing of a particular bank was compared to the captain of the Titanic's failure to recognize that the ship was sinking as depicted in the 1958 movie, "A Night to Remember." See "And Now, the Power of the Tape," Sherman, Rorie, NATIONAL LAW JOURNAL, Vol. 15, No. 23, February 8, 1993, page 1. The rationale for permitting high tech exhibits as part of closing arguments is that they are no different from the analogies used by trial lawyers in making their arguments today.

Because courts have not yet set uniform rules for the use of high tech exhibits, trial courts will have broad discretion in whether to allow their use. See "Courts Revisit Computerized Exhibits," Cerniglia, Timothy, NATIONAL LAW JOURNAL, Vol. 16, No. 29, March 21, 1994, page c12. High tech exhibits that fairly and concisely help juries understand the issues presented to them are far more likely to be approved by trial courts. The ability to translate the trial lawyer's clear and concise ideas into high tech exhibits that can be modified easily as the case progresses can depend on the technology used during trial preparation.

2. Creating Effective High Tech Exhibits

Today there are many different types of computers and software that can be used to develop high tech trial exhibits. Many are proprietary systems developed by trial consultants. From the lawyer's perspective, the critical issue to understand is how much work has to be done to transfer the raw material (e.g., depositions, documents, videotapes, animation ideas) into finished trial exhibits. The more difficult or time

consuming the transfer and preparation of raw material the less flexible the trial exhibit will be to respond to developments at trial. In the *Cimino* trial, for example, all of the finished high tech exhibits were prepared on special professional quality tapes that could be produced only in a studio. During the trial, when changes had to be made to the high tech exhibits, they were completed in the studio in California overnight and flown by chartered plane to Texas for use the next day in trial. Today, by carefully choosing the technology to be used at trial and in trial preparation, such logistical nightmares can be reduced.

Here are some guidelines for achieving consistent technology:

Depositions. Get electronic copies in the same format so that they can be easily searched electronically.

Videotape depositions. When you have a choice, hire a professional video service that uses the best quality cameras and equipment so that you will be able to get a result that can be incorporated easily. Pay attention to the way the video camera views the witness and the color of the background. Some views are easier to look at than others and give different visual impressions to the jury that can affect credibility.

Transfer the original videotape to the same format that will be used for making final trial exhibits.

Select those questions and answers that are the most important for the trial theme or theory of the case and mark them for easy reference.

Documents. Identify the ten key documents that will make a difference in the outcome of the case. Develop a consistent way of referring to those documents in all depositions.

Make images of the ten documents and store them in the same format that will be used for making the final trial exhibits. Keep evaluating the ten documents against any newly discovered documents and revise the list accordingly.

Animation. The software for creating animation should be compatible with the format used for documents, videotapes and deposition. Animation has the longest lead time for preparation.

Even if the high tech exhibits are clear and concise and approved by the court for use at trial and have been prepared with consistent technology to allow for last minute modifications, the trial lawyer still has to work the exhibits into their trial presentation style to be effective.

3. **Software Presentation Programs.**

A variety of software presentation programs greatly assists the courtroom presentation. Microsoft's PowerPoint and Astound offer the ability to present slides, video animation, sound and charts to the laptop computer. A demonstration will occur at this seminar.

4. **Video settlement brochures.**

With the use of a video presentation table such as Elmo or the Doar, it is relatively easy to prepare a video settlement brochure. A demonstration will occur at this seminar.

5. **Integration of the Internet in Your Practice.**

_____ Access to the Internet allows downloading of text or images for ready use as trial exhibits. A demonstration will occur at this seminar.

6. **Use of Technology Before Trial**

The use of technology cannot distract the jury from the information presented. It is critical that the high tech exhibits have to start on time and finish when they are supposed to finish. Slight delays that may be perfectly understandable from fumbling with the equipment become painful silences in the courtroom.

To avoid this problem, bar code systems have been developed that enable the trial lawyer to use a pocket pen to instruct the computer system what to and when to stop. Each system has its own limitations that must be tested and understood for the particular courtroom where they will be used. As an example, a presentation was being made to a large group of executives in a modern hotel. The same pocket pen bar code reader was used for the high tech demonstration. Because of the interference presented by electrical layout in the room, the computer had difficulty receiving the instructions from the portable pen which caused a delay of several seconds. Frustrated that nothing was happening, the lawyer making the presentation kept running the pen over the bar code that resulted in the exhibit starting over and over again every two seconds. By the time the exhibit was actually shown, the audience had lost all interest in the subject presented and were only interested in whether the pen would work or not. The same phenomenon occurs in the courtroom. Juries expect the presentation to be made with Hollywood precision; precision that requires practice and planning.

Many courts are sympathetic to the logistical problems of presenting demonstrative exhibits in courtrooms that were not designed for high tech displays and will permit trial lawyers to test them during non-court hours. An effective jury presentation requires video display terminals that are easy for the entire jury to see when the courtroom lights are on and high-quality sound reproduction. Sometimes, this may involve obtaining permission from the court to install large professional quality monitors in the courtroom prior to the trial.

Some high tech exhibits work like home videotapes with which the jury is familiar. You start the exhibit and it plays until it is done. More complicated exhibits, such as impeaching cross examination on videotape with simultaneous display of documents, require instantaneous access to the right question and answer and the right document. To do this, many trial lawyers place a bar code right in their cross examination outline. If they need a particular question and answer or document to impeach the witness, it is readily available. This requires identifying the key questions and answers, locating the video and text portion of the deposition electronically, and assigning them bar codes during the trial preparation process. If witnesses change their testimony during direct examination in ways that were not anticipated, the trial lawyer needs to be able to identify new question and answer pairs quickly and assign new bar code numbers for use in cross examination.

The trial lawyer should learn the limitations and strengths of the technology selected before trial begins. One way is to prepare mock video cross examinations and use the technology before a practice jury. The jury has to hear the inconsistent statement, see the document legibly and see the videotape of the same question. By using technology, the trial lawyer can decide whether it will work with his/her trial technique. Some lawyers prefer to have a person designated to handle all of the technical equipment in the room and coordinate their examinations with that person. Others are comfortable doing it themselves. Done incorrectly, the jury will focus on the fumbling with technology rather than the witness's credibility. The lawyer has to be comfortable using the technology in the courtroom.