

Present

The Courtroom of the Future: The Bare Essentials for a Technologically Competent Courtroom

By Judge Herbert B. Dixon Jr.

Upon our celebration of this fiftieth anniversary of the National Conference of State Trial Judges, I had an epiphany: despite numerous technological advances over the last fifty years that have made their way into courtrooms, most trials in this country's courtrooms are presented in much the same way as trials were presented fifty years ago. Yes, we do have courtrooms in most federal jurisdictions and some state jurisdictions that have earned the title "Courtroom of the Future." Nevertheless, in too many of our courtrooms, trials look and feel the same as they did half a century ago. This realization struck me during a recent trial in which counsel introduced into evidence a four-by-six-inch photograph to prove his client's case. I watched (and

the whole courtroom waited) as the small photograph was passed slowly from one juror to another among all twelve jurors and two alternates. My gosh, that's the same way lawyers presented their cases in 1958! This epiphany has caused me to conclude that courts have an obligation to encourage the use of technology because the resulting improvements in the quality and efficiency of trial presentations will improve the delivery of justice.

I am not suggesting that every trial should have video depositions that include a simultaneous transcript of the testimony and a split screen showing the exhibit about which the witness is being examined; nor am I suggesting that there must be animated re-creations of every car accident brought to litigation. I am also not suggesting that counsel must present to the judge in every case an electronic trial brief that contains imbedded audio and video files, copies of exhibits, and links to the full text of the cited appellate or statutory authority. However, I am suggesting that today's courtrooms should meet certain minimum technology standards to encourage the use of technology, particularly in smaller cases, as an excellent way to promote the efficient administration of justice. The use of basic technology can help increase efficiencies and a jury's and judge's understanding of the evidence and arguments, thereby improving the administration of justice. Unfortunately, since I am not aware that anyone has developed minimum technology standards for courtrooms, I guess I will have to start the discussion. In the process of starting this discussion, however, I ask

every trial judge to urge his or her court administrator to equip every courtroom at least to these minimum standards.

Document Camera

The first item on my list of bare essentials for a technologically competent courtroom is a document camera, which also is referred to as an evidence camera or a visual display platform. Quite often the document camera is incorrectly called an "Elmo" because of the popularity of an early document camera from the Elmo Company. As a result of the success of the product by this manufacturer, many users refer to any document camera as an "Elmo." The world now understands that "Elmo" is the brand name of that unit and not a description of the product itself. (This is the same type of error that some of our elders have made in calling all cellophane tape "Scotch" tape, all tissues "Kleenex," all cola beverages "Coke," and all refrigerators "Frigidaire.")

But back to the document camera The purpose of the document camera is to produce an enlarged image of a flat paper document or a three-dimensional object that is small enough to fit at the base of the device. The older model document camera reminds me of a modernistic robot that has been sliced through the waist and separated from its legs. The bottom portion of the device is a platform where the evidence exhibit is placed. The head of this imaginary robot is the camera that focuses on the exhibit, the enlarged image of which is projected onto a screen or displayed on a big video monitor. And



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lastly, the arms of this robot contain lights that provide sufficient illumination for the camera to convert and broadcast a perfect enlargement of the exhibit to the screen or monitor.

If that attorney presenting the four-by-six-inch photograph in my opening example had been in a courtroom containing this technology, the judge could have directed eager counsel to show the photograph using the Elmo, oops, the evidence camera. The entire jury (the judge and courtroom spectators, too) would have been able to see the enlarged photograph all at once. Obviously, this process would have saved the time of passing the photograph through the hands of fourteen jurors and of each one taking several seconds to view it. This technology also would provide a much better viewing opportunity for everyone.

Every courtroom in which jury trials are regularly conducted needs its own document camera because, in most cases, at least one witness is asked about a photograph, document, or another exhibit, the significance of which counsel highlights during closing argument. The idea of sharing an evidence camera between several courtrooms is counterproductive because one can never foretell the precise time of the day or moment during the trial when the equipment will be needed.

VCR, CD, and DVD Players; Speakers; and Video Monitor

VCR, CD, and DVD players, along with speakers and video monitors, are basic technologies that often are supplied by counsel but which I nevertheless urge as standard courtroom equipment. These items are relatively inexpensive. They provide a fair opportunity for all parties, including those who are self-represented, to present their electronic evidence to the judge and jury, and they are available to enable the jury to review such evidence during deliberations. Once again, sharing such minor equipment among several courtrooms is so inconvenient and inefficient as to not justify any financial savings that might result from the sharing.

Laptop Computer with CD and DVD Player

In addition to the standard CD and DVD players, another essential piece of technology in my proposed minimally equipped courtroom is a laptop computer with CD and DVD drives. There are several reasons for having this additional equipment that seems only to duplicate the function of a standard CD and DVD players. For example, in the event a video or recording is received in evidence in a format that does not work on a standard CD or DVD player, the court's laptop could be used to play the file during trial so that the jury can review that evidence during deliberations. Of course, this assumes that the court's laptop has the appropriate software. In addition, use of the court's

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laptop computer during deliberations can help avoid the risk that a computer supplied by a party might contain other information that has not been received in evidence, which the jury may inadvertently access. Finally, if the court has its own laptop computer available during the evidentiary proceedings, that extra availability of equipment could be an appropriate relief to counsel whose equipment has suffered the dreaded "technology malfunction."

Projector, Projection Screen, and/or Video Monitors

The images from the document camera, computer, or VCR and DVD players can be displayed in several different ways.

First, video from all of these sources can be displayed through a digital projector that will project the enlarged image on a projector screen or large monitor.

For these connected devices, an important technical issue that must be considered concerns the compatibility of the equipment. Some VCRs provide only analog output, and some projectors or monitors accept only a digital signal. The user must ensure that either the output device or the input device has its own internal converter or that a separate analog-to-digital converter is available to convert the signal between the two devices; otherwise, the video will not be available for viewing. This scenario would be similar to the situation in which analog television users will find themselves when television stations switch in February 2009 from analog broadcasting to digital broadcasting, as mandated by the U.S. Congress. Unless the signal is converted through the cable company or a converter box is connected to the analog television, the user will have to find another form of entertainment.

A second important issue concerns the lighting power (lumens) of the projector, and the size of the monitor and/or projector screen. Obviously, the projector must be powerful enough to show an enlarged image that is both bright and clear, and the screen or monitor must be big enough for the judge and all members of the jury to see clearly.

Once the basics of courtroom technology are installed and available for trial, the judge can then begin consideration of other technological capabilities for the courtroom, such as

- annotation equipment that allows witnesses and lawyers to mark on, or emphasize parts of, the electronic exhibit (i.e., the image on the projector screen or monitors);
- a color printer to print copies of the annotated electronic exhibit;
- an electronic whiteboard to replace the old-fashioned easel, blackboard, or dry-erase marking board on which in-trial drawings or writings of a witness or coun-

sel would be displayed on monitors or the projector screen for easy viewing by the judge, jury, and courtroom spectators;

- wireless Internet access that permits counsel to access their office files and calendar and perform immediate online research for the judge's benefit;
- video camera and broadband availability that permits transmission and receipt of remote witness testimony to and from the courtroom; and
- an integrated and central system that allows the judge to control when and what counsel can show to the jury on the evidentiary visual display device.

Final Thoughts

The quality of justice fifty years ago may have been excellent, but we can always do better. Compared to then, jurors now in many courtrooms, under controlled

circumstances, are permitted to take notes, suggest questions that the judge might ask a witness, and even begin discussions about the evidence before completion of the trial. There is research to show that these changes can improve the jury's understanding of the evidence and the quality of the jury's verdict. In my opinion, courts should likewise encourage the use of technology during trial as another opportunity to enhance a jury's understanding of the evidence, promote the efficiency of the trial, and improve the delivery of justice.

Use of technology in litigation does not apply only to big cases. A court with this mind-set will fail to encourage the use of technology on a regular basis, which, in turn, means that when technology is needed or brought in for a big case, fewer court staff members and judges will know how to manage it successfully. Using these basic technologies, every day, particularly in smaller cases, will see an increase in not only

efficiencies during the trial, but also a jury's and judge's understanding of the evidence and arguments. The argument that technology is only for the rich is false. In some cases involving small financial amounts, even self-represented litigants have presented their evidence using digital-camera and cell-phone photographs and videos.

This list of basic equipment is my starting point for encouraging the use of technology in efforts to achieve justice for all in a fair and efficient manner. Tell your court administrator this list would be a great start.

Last, do not forget to have available "legacy technology," such as a cassette tape player, to access evidence in old formats that parties or lawyers in your jurisdiction sometimes submit. Hopefully, the legacy equipment that you need will not hark back to the days of the Betamax tape, eight-track tape, or 78 RPM record! ■