

From the Virtual  
Courtroom to the  
Virtual Courthouse

By Lauren Fajoni Bartlett

**With a little encouragement from the industry, cyber courts and video conferencing may become the next big thing in modern litigation and dispute resolution.**



■ Lauren Fajoni Bartlett is a litigator in the New Orleans firm of Leake & Andersson, LLP. She specializes in the areas of products liability, commercial litigation, insurance law, construction law and appellate advocacy. Ms. Bartlett is DRI's Technology Committee newsletter editor, vice chair of the DRI Young Lawyers Committee Technology Subcommittee, and the Young Lawyer Liaison to the DRI Insurance Law Committee.

# Fundamental Considerations for the Modern Lawyer

The power of the written word and the persuasiveness of a really good orator are key to a successful legal practice. Indeed, these traits are indispensable. And, for a very long time, they were virtually the only tools avail-

able to litigators. But, with the passage of time and the advent of modern technology, strict reliance on the written or spoken word has become less critical. Over the course of the past few decades, society has changed from a time when jury service was considered each citizen's civic duty and people would take time to read the newspaper over a leisurely cup of coffee, to today's fast-paced world in which people have short attention spans, consider jury service a major inconvenience and get news in the form of an instant message from [cnn.com](http://cnn.com). Today's technology allows attorneys to compensate for these kinds of social changes by giving us the tools that we need to deliver short, concise, powerful arguments before our juries lose focus, and hopefully, we can convince them to see our cases through our eyes. So, if a picture is worth a thousand words, and as Shakespeare wrote, brevity really is the soul of wit, then incorporating technology into the courtroom will give today's lawyer a competitive edge that could win the case.

In today's world, we cannot escape the reach of technology, and the practice of law is no exception. From the morning commute to firm management, technology has invaded every aspect of our world, although I think few will disagree that many courtrooms may still be in the stone ages, especially state judiciary courtrooms. Fortunately, there are ways around the technological limitations of a courtroom. What's more difficult to get around, though, is the budgetary restraints placed on us by clients. We can no longer spend whatever it takes to defend a case. In these economic times, clients are more cost conscious, cases are more complex, the legal issues are more complicated and jurors are more sophisticated. Clients have started really cutting litigation related expenses, which can have a major impact on how we try cases. This article offers suggestions for accommodating the cost-conscious client, incorporating technology into an ill-equipped courtroom with limited resources at minimal cost, and makes a few predictions about the future of litigation.

## Using Digital Media to Overcome an Antiquated Courtroom's Limitations

These days no one goes to trial. Instead, the vast majority of cases settle because trial is too risky, very expensive, a waste of resources, burdensome and time-consuming. As a result, very seldom do simple auto accident cases go to trial, so when we finally do have a chance to try a case, it generally involves complex issues of fact and law, often is document-intensive and frequently involves multiple experts, few to none of whom are local. These cases cost a lot of money to try and often require sophisticated trial graphics to explain complicated issue to a jury. Presenting this type of a case in one of today's outdated courtrooms can be a bit cumbersome.

Today, trial graphics, video demonstrations and even live feed Internet interfacing are just some of the basic resources that lawyers use when preparing a case for trial. Nevertheless, while most lawyers use cutting-edge trial technology, courtrooms continue to lag behind. These days, it seems that the courtroom really is one of the last remaining dinosaurs.

More often than not, attorneys have to transport countless boxes of documents along with television sets, DVD players, projectors and other cumbersome equipment only to discover that the equipment doesn't work or the courtroom lacks sufficient resources to accommodate everything that you had planned to use to present your case. Fortunately, much of this equipment can be dispensed with, which in turn minimizes the risk of malfunction and eliminates other problems associated with insufficient courtroom resources. With a little preplanning, all of the technology needed to try a case can be brought into court with a few simple devices that require no more than a single electrical outlet.

Just about anything can be converted to digital media and saved to a flash drive—documents, video depositions, slide show presentations, accident reconstruction modules—pretty much your entire case. Imagine how much simpler trial would be if you took evidence that fills an entire conference room, converted it all to a digital format, saved it to a flash drive that fits into your pocket and brought that with you to court instead of trying to move all those boxes and whatever other equipment you

might need. And, as an added perk, imagine that you can also search for documents electronically instead of digging through boxes of materials to find that needle in the proverbial haystack. Further, you can back up all of your presentation materials, so if something malfunctions, you're not left in a jam. After all, it's much easier to bring an extra laptop or flash drive than it is to bring a television set and DVD player to court.

These days, with a flash drive, a laptop and a projector, there is very little you won't be able to do at trial. What's better is you're no longer at the mercy of the courtroom's limited resources because all that you need can be plugged into a single electrical outlet. Finally, because these devices are so compact, they can be carried over on the morning of trial and taken back to the office at the end of each day, which not only improves security, but you're no longer left without access to your file materials.

## Using PowerPoint Animation to Modernize Aids

The use of demonstrative aids at trial can be very useful when trying to present your case to a jury, and some of them can be quite elaborate when the potential exposure justifies the expense. But, the expense of an eye-catching demonstrative aid isn't necessarily justified in every case. In those cases, attorneys must find other less expensive ways to illustrate their cases. More often than not, attorneys will use exhibit boards, but in the right case, PowerPoint animation provides a more illustrative alternative.

PowerPoint animation is a relatively unknown and often overlooked application that can serve as a more dynamic demonstrative aid than the typical two dimensional exhibit board. Obviously, PowerPoint animation should in no way replace an accident reconstruction expert, and its use should be limited to the same types of uses for which you would use an exhibit board. A program such as PowerPoint animation simply serves as a way to present the same basic information in a dynamic way. A PowerPoint animation presentation is not scientifically accurate, and it is not admissible evidence, but you can and should use one to emphasize a point or underscore your theory of a case.

A PowerPoint animation presentation can be very involved or it can be very basic.

When configuring your animation, the first thing that you need to keep in mind is the more basic the case, the more basic your graphics should be. After all, it would be difficult to justify spending 10 billable hours setting up an animation for a trial that is only scheduled to last a half a day. The best approach to utilizing a PowerPoint animation presentation would be to

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give the case-specific information to your IT department and have IT staff set up the animation. If you do not have an IT department and are not familiar with PowerPoint animation, then an on-line tutorial or computer basics class would be well advised. But, once you get past the learning curve, this software can become an invaluable demonstrative aid that is a bit more convincing than a two dimensional picture pasted on an exhibit board.

PowerPoint animation is relatively inexpensive and easy to configure once you spend a little time getting up to speed. Most law firms use Microsoft Office software, which includes PowerPoint as part of the basic package, so more than likely, you already have PowerPoint animation on your computer. Depending on your clip art selection, though, you may want to invest in a character software package, such as VoxProxy, which is designed for use with Microsoft PowerPoint and offers numerous characters that both move and speak, albeit with a somewhat computer-generated voice. The one-time investment is relatively minimal—about \$200—but it can really bring your presentation to life.

For example, consider a typical automobile-pedestrian in the crosswalk accident. At trial, demonstrative aids likely would include a picture of the crosswalk that the attorney can refer to when describ-

ing how he believes the accident occurred. While the exhibit board does convey to a jury how an accident scene looked, it's up to an attorney to explain to jury members how that accident really happened. Conversely, using PowerPoint animation as your demonstrative aid, you can put the scene in motion and show a jury how a plaintiff wasn't paying attention when

Imagine having an expert testify from the comfort of his or her office instead of incurring the expense of live testimony.

he or she wandered into the street against the light. In essence, an exhibit board will give you a blow-up of a picture of the intersection at a single point in time, whereas animation software allows you to put an accident scene into motion and make your presentation a bit more compelling.

The scene and animation setup for this kind of accident is not overly involved or time-consuming. For a very basic animation, you would simply use a photograph of the intersection as the backdrop for the animation, place a pedestrian and a vehicle into the scene as indicated by the facts, program the movement through a simple drag and click of the mouse and save the animation. A video could be used with similar character placement for a bit more of a dramatic effect. Using a video would also allow you to include signal changes and other extraneous factors that may have some impact on your case. For close to the same cost as an exhibit board, this kind of basic animation can be a useful demonstrative aid that is a bit more interesting to a jury.

### Using Live Internet-Feed Connections to Save Costs

With consumer confidence on the decline, corporate clients continue to watch their bottom lines decline, making the payment of exorbitant legal bills all the less palatable. In an effort to cut costs, clients are

looking for ways to minimize the cost of litigation and favorably view those attorneys who attend to their concerns and work with them to reduce costs. One litigation expense that often offers room for compromise is the area of travel expenses. A client can pay thousands of dollars for an attorney to travel around the country meeting with experts or visiting a home office, much of which is 'dead' billable time that involves no substantive work. Of course, an attorney still needs to meet experts and talk with key in-house employees who have vital information regarding the merits of a case. One solution is to schedule a live-feed Internet interface between a lawyer, expert and client on either Windows Meeting Space or Microsoft Office Live Meeting.

Windows Meeting Space and Microsoft Office Live Meeting are great tools for communicating with individuals or groups of people from all over the country and world, and they offer innovative ways to save money, streamline communications and impress clients. Both systems are very similar, although Microsoft Office Live Meeting accommodates varying user systems, whereas Windows Meeting Space requires that all meeting participants have the same operating system. These software packages have many of the same capabilities as GoToMeeting; however, Windows Meeting and Office Live offer both audio and video features, whereas GoToMeeting does not.

The major benefit of video is that it permits an attorney to review and go over documents or offer real-time illustrations of complex issues remotely. In many instances, this software can eliminate the need for one or more expensive trips by an attorney because the face-to-face audio or video mechanism allows attorneys, experts and clients to have in-person document review sessions, strategy meetings and even deposition preparation via remote access. Conducting these meetings from the office minimizes or eliminates the wasteful added expense of both the billable and nonbillable travel time and associated per diem costs.

Another useful tool is the "chat" option, which allows certain participants to have a side conversation without sharing it with the group. For example, in a hypothetical conference among an expert, attorney and client, the chat feature allows the attorney and client to have a side conversation about

what the expert is saying without waiving privilege or otherwise involving the expert in that part of the conversation.

This technology is very inexpensive and easy to use. The program is offered as a free download for all participants, and only the meeting organizer is charged a fee—about \$15 a month. You will need a Webcam—a really nice one will run you less than \$100—and depending on how good the microphone is on your Webcam, you may need an additional microphone as well, which costs about \$20. Most law firms and corporate clients will already have these, and many of your scientific experts will as well. However, you may need to make arrangements to get a Webcam to anyone who does not already have one. It is helpful to keep a number of these on hand so that they can be lent as needed and returned after a conference.

While technology certainly has its place during the pretrial phase of litigation, it can also reduce trial costs in certain instances. For example, if witness availability becomes a problem or live testimony would be cost prohibitive, one option is to present the testimony via live Internet feed using one of these software systems. Imagine having an expert testify from the comfort of his or her office instead of incurring the expense of live testimony. This could lead to real cost savings given the right circumstances. For such a presentation to be successful, though, some preplanning is critical. First, a good land-based Internet-feed is essential—wireless will not work because it will deliver the stream with too much delay. Second, make sure that the courtroom has Internet access. Third, notify opposing counsel to ensure he or she does not object. Fourth, and most importantly, confirm directly with the judge that he or she will permit a witness to testify remotely. And fifth, plan a trial run enough ahead of time to implement an alternative plan if the need arises.

### Taking Live Internet-Feeds to the Next Step: Cyber Courts?

An emerging area in the world of applied litigation technologies involves using Internet software, such as Windows Meeting Space and Microsoft Office Live Meeting, to create cyber courts or virtual alternative dispute resolution proceedings. Out of the necessity created by the endless backlog of

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cases, the inability to get a trial date and growing dissatisfaction with the arbitration process as it currently stands, comes the ingenious cyber court and the idea of cyber alternative dispute resolution. In 2002, ingenuity became a reality.

Michigan's cyber court system, created by legislation, became the first test case for just this sort of applied technology. In 2001, the Michigan legislature enacted a bill that created this country's very first cyber court, which became effective in 2002. Among the goals of the Michigan Cyber Court are the following: (1) to permit alternative dispute resolution mechanisms to benefit from changes in technology; (2) to establish virtual courtroom facilities; (3) to conduct court proceedings electronically; and (4) allow electronic filing of documents (M.C.L.A. Sec. 600.8001). This cyber court maintains a docket, schedules conferences, hears motions and tries cases just as any other district court would do, except that instead of holding court in a courthouse,

all proceedings are conducted electronically, with video and audio conferencing or Internet conferencing. This venue type would be particularly useful in multi-district litigation or in cases in which a corporate party has retained national counsel who is not from the forum state. At present, the Michigan Cyber Court only has jurisdiction over business and commercial actions, however, there is certainly the potential to expand the scope if this pilot program proves successful.

Cyber courthouses allow for electronic document filing, court appearances via remote access or videoconferencing and even witness testimony, much similar to witness testimony using Windows Meeting Space and Microsoft Office Live Meeting, described earlier. This system of dispute resolution would be particularly useful in commercial litigation, class actions and multi-jurisdictional litigation because it minimizes the amount of travel that is required and the length of time that people

are required to be out of the office and away from their lives, which, in turn reduces the cost of litigation and shortens case resolution time. All of these things contribute to a more productive and economical judicial system, which in turn is a benefit to all.

### **Conclusion**

Today's litigation technology can be used to reduce costs and save time given attorneys' impossible schedules and how they more often than not have to be in several places at the same time. Fortunately, there are ways to minimize your time away from the office, which, in turn, reduces costs, increases productivity and even promotes judicial economy. While courts continue to lag behind in adapting technology, the seeds of a modern, innovative approach to dispute resolution have been planted, and with a little encouragement from the industry, cyber courts and videoconferencing may become the next big thing in modern litigation and dispute resolution. 