

## **David vs. Goliath - Using Technology in the Courtroom**

When David challenged Goliath, he was armed with a slingshot, 5 stones, and his benefactors' prayers. Although Goliath was many times his size, David's single well-aimed shot to Goliath's forehead brought the giant down for his eventual demise.

Well-aimed shots are the skilled trial lawyer's stock-in-trade. Still, in times past, when smaller firms went up against the legal community's Goliaths, they often found themselves outgunned by technology that, because of expense, they couldn't hope to utilize. Today, in the 90's, this kind of technology is no longer out of the reach of smaller firms and less affluent clients. In fact, some courtrooms are set up so that litigants can rent the equipment right there in the courtroom on a half-day or daily basis just by swiping a credit card.

If you have not yet delved into using computers to manage and present evidence in the courtroom, now is the time to investigate it. Today's technology is effective, catches jurors' interest and attention, and, while not cheap, it is less expensive than you might guess. Here are some practical suggestions for you to consider if you decide to wage your battle using courtroom technology.

**If you've never used computers to present evidence before, hire someone to guide you on the twisting trails of courtroom technology.** Experienced trial consultants charge anywhere from \$800 - \$1500 a day to assist attorneys in presenting evidence electronically. Yes, it seems expensive but you are paying for expertise and, sometimes, unending days that are critical to the success of the trial. You want the presentation of the evidence to appear simple to the jury, but there is far more to putting on an electronic trial than meets the eye. You are paying the consultant to make sure that all of the behind-the-scenes preparation pays off.

At least for your first outing, hire someone with experience and pump them for information the entire time. If the consultant is willing, someone on your staff can act as the consultant's assistant and then be trained to take over on subsequent trials. Trial consulting is becoming one of the big careers in the 90's. Make sure that the person who says they will help you through the process in fact has the right experience. Your network support company may claim they can set you up in the courtroom, but get references from clients for whom they've performed the same services. Don't be an ambitious company's guinea pig. Cabling a courtroom is more like setting up a rock concert than a computer network. Experience counts here.

**Technology will never replace the skills of a good litigator,** and it won't make a good advocate of a poor one. Technology does, however, sometimes make a skilled advocate appear to be a poor one if the process isn't carried out well.

**Timing is everything.** If you have never used a computer in the courtroom before and are not familiar with the programs that are required to accomplish a successful computerized trial, don't wait until the last minute to be educated. A day, week or month before trial is not the time to sit down for training on a complex computer program. You will need to become well versed with the software's features and eccentricities once you've been trained on it. (You wouldn't let your kid drive in the Indy 500 the day after he or she gets a driver's permit, would you?) The trial team also

faces critical deadlines in that month before trial, deadlines that produce stress. Stress is not conducive to learning. Depending upon several factors (whether the documents are already imaged and indexed or whether you are already comfortable with computers and the programs), allow a minimum of 60 days before trial to prepare for the presentation of evidence by electronic means in the courtroom.

**Work with your consultant to answer some key questions.** How do you want to use technology? How much are you willing to spend? Do you have a database now or do you need to build one? If so, what documents will be included? Will they all be imaged or will only some be selected? (Be careful. There seems to be a rule – the document you don't image is the one you end up wanting to use in trial!) Diagram the courtroom, including measurements, blind spots, and locations of power outlets. Determine whether a single projection system will be effective or will you need to place monitors around the courtroom to get the best results? How long will the cables have to be? Does the judge want a monitor on the bench? Where should it be located, given the judge's preferences? Do you want to present only documentary evidence using the computer or do you want to use video clips or animations? If so, who will prepare them for how much and how long will it take? What computer equipment will you need, and how will it be configured? Do you have the right software to do the job – and do you know how best to use it in the courtroom?

**Don't plan to ambush the other side by walking in at the last minute with a computer, projector and screen.** You may surprise your opponent, but more importantly, you're ambushing the judge, and that doesn't usually go over well. Obtain the court's permission in advance. This may require educating the judge (and opposing counsel) on how you plan to use the technology. If that's the case, use your consultant or the software vendor to show the technology so they can provide a problem-free demonstration as well as answer any questions the judge may present.

**Be prepared!** In a paper-based trial, a skilled litigator would not think of waiting until a witness takes the stand to decide which exhibits to use during questioning. The preparation of paper exhibits (especially blowups) requires planning. Intuitively one would think that technology slices through such problems, but the electronic presentation of evidence is not as spontaneous as it seems to observers. The entire system must be thoroughly tested before the trial starts, resolving problems that arise well in advance. Set up the projector(s), computer(s), cables, screens – everything you plan to use just as it will be laid out in the courtroom. Make sure all the pieces work correctly. Then, as early as you can get access to the courtroom before trial (at least one or two days), set up the equipment there and test it again...and then once again.

Thorough preparation also includes a practice run-through the exhibits you plan to use on the presentation system. If you're using a barcode wand to retrieve the exhibits, make sure all of the barcodes work. If an image wasn't scanned properly or the medium on which it is stored has been damaged, then it will take some time to correct the problem.

This doesn't mean you can't spontaneously use an exhibit that wasn't in the original plan, but make sure that you are prepared for all possibilities.

**Rehearse!** Unless you and the person handling the computer for you have psychic communication down pat, you should rehearse each day's plan with that person the night before. Go through your anticipated outline with your courtroom technical assistant. If you will be highlighting excerpts "live" before the jury, then make sure your assistant knows exactly which phrase or phrases you want highlighted. You do not want the jury diverted by an improperly highlighted exhibit nor do you want to have to spend time cueing your assistant. An hour or two spent the evening before will make the next day flow more smoothly.

**Backup, backup, backup...everything!** When David went off to defeat Goliath, he carried not one stone, but five. He probably carried a spare slingshot, too, in case the first one failed to function properly. Technology fails. The more complex the system, the more opportunities exist for problems. Hard drives crash, CDs get scratched or warped, power strips go bad, cables develop weak points, batteries die, projector bulbs burn out, software programs develop corrupted files. Sometimes all of these disasters won't occur during the same trial.

Be pessimistic, and you'll be prepared should something go awry with the equipment. Here are some tips:

Assume the computer will fail or be knocked onto the hard courtroom floor, and have a spare available on quick notice. I recently heard of a trial where the laptop was dropped the first day, damaging the bar code wand port. Because there was no backup system available, the trial team struggled without the wand throughout the trial.

Take for granted that the projector's bulb will burn out, the power strip will catch on fire, and the batteries will die. Power and light are critical to your presentation. Have extras on hand in the courtroom.

It is not unusual that one or more important files in a software program become corrupted, for any number of reasons. Keep back-up program disks in the courtroom.

If you're using a CD to hold the images for your trial presentation, keep a duplicate of the CD in the courtroom. (A duplicate of a single CD that can hold images of 12,000+ pages of exhibits costs only about \$50-\$100.)

If you're using a projector to present the images on a screen, insist that the projection system's vendor have a spare projector available in the courtroom within 30 minutes of a crisis call. Ask for a guarantee of that commitment in writing. If you're on an out-of-town trial, arrange for a back-up system to be kept at the hotel. Out-of-town vendors do not usually have an ongoing relationship with out-of-state lawyers. If there is a crunch between a vendor's current client and a one-shot out-of-state firm, who do you think will get the last available projector?

Consider using an Elmo-type overhead projector in addition to the projector you use to present imaged evidence. An Elmo is a system that projects the image of a paper document or physical object similar to the way an overhead projector works with a transparency. If something happens to the projection of an imaged exhibit or if you're caught by surprise with a new exhibit introduced by the opponent, you can still present the exhibit to the jury using the Elmo projector. I recently talked with a trial consultant who said that he considered it a failure to have to use an Elmo to present an exhibit that should have been presented from the computer. Baloney! It's smart crisis management!

Keep a list of contact numbers (including technical support numbers and names) at the courthouse and invest in a cell phone to be used outside the courtroom doors. (Remember to turn it off in the courtroom!) You won't have to fish for spare change for a pay phone when you need to make several calls to resolve a technology crisis.

Back up all of the files you will be using at trial. Trial presentation and litigation support programs create huge sets of files. Take steps to have appropriate systems in place to make frequent and reliable backups. Use a large hard drive, a direct cable connection between two

computers, a Zip or Jaz drive, or a back-up tape (or some combination of these) for backups. While you may not consistently make back-ups during your normal workday, do so for trial!



The bad news is that you may still lose. Technology doesn't guarantee the outcome of any case. Sometimes jurors decide cases on the basis of unpredictable issues. Still, effective advocacy coupled with the wise use of electronically presented evidence can radically improve your chances of getting your points across to jurors.