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Keeping up with the trends in technology

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Legal briefs that talk; Adobe Flash for the jury; real-time transcripts that scroll while the witness testifies; video screens as big as the jury box.

Increasingly, managing high technology can be a necessary talent for the litigator.

But lawyers sometimes fall behind in the fast-changing technology of the courtroom.

They particularly can fall behind in what Generation X and Y jurors look for.

Or they can go overboard and lose the jurors — or use technology amateurishly and lose the jurors that way, according to interviews with lawyers and trial consultants.

Six lawyers and members of trial consulting firms were interviewed about recent trends in litigation technology.

They are: Dan Winter and Ravi K. Bhatt of Chicago Winter Co. LLC; G. Christopher Ritter of The Focal Point; Christopher J. Lind of Bartlit, Beck, Herman, Palenchar & Scott LLP; S. Richard Carden of McDonnell, Boehnen, Hulbert & Berghoff LLP; and John D. Worland Jr., supervisory trial attorney for the Securities and Exchange Commission.

Here are their views:

Dan Winter and Ravi K. Bhatt

An electronic brief prepared by Chicago Winter Co. is not just a long paper document filed electronically.

It is a legal brief on a CD or a USB memory stick “that allows the user to experience a Web-like presentation of the brief, including video excerpts, graphics that are narrated, animations and moving graphics,” Dan Winter explained.

Winter and Ravi K. Bhatt call their firm’s electronic briefs See Briefs. E-briefs have been experimented with for 10 years, but they’re moving into the mainstream and judges increasingly ask for them, Winter said.

The judge can click on keyed text in a See Brief to delve into the separate document where the text originated to see the context.

When a witness is quoted, the brief allows the judge (or anyone reading it) to mouse click next to certain text, for instance, “Jones admits the product is not his invention.”

Upon clicking, the judge will see the verbatim quote from the deposition transcript. If the judge clicks on that quote, he can then see the whole page of the deposition where that quote is contained.

The See Brief also allows the judge to watch video excerpts of witness testimony if

the judge wishes, or to ask for graphics or animations when the judge wants them to illustrate the technical assertions of the brief.

In an example provided by the company, animations show a drug diffusing into the blood stream in various ways, a process of interest in the sample patent case.

“We write our CDs so that when you put it in the computer, it launches itself,” Winter said. “It will run on any computer.”

‘I’m also amazed that as the cost comes down, there is virtually no case that could not benefit from having some form of trial graphics.’

See Briefs contain a control panel that appears on the the computer screen with “Back, Forward, Zoom In, Zoom Out, Close” and a clickable index of the brief.

Winter said he has heard concerns that a judge somewhere might not be able to use this technology. “We haven’t run into one,” he said. “We make ours pretty easy to use.”

According to Bhatt, who is a lawyer, their firm produces a See Brief when a client requests one.

In the last two years, Winter said, “there is increased demand for it by judges, typically in complicated cases including patent cases.... It serves as a tutorial and a summary of the positions [the parties are] going to be arguing in court.”

“The graphics we do for a brief are identical to the graphics that we show to a jury,” Bhatt continued. Bhatt said this is an advantage to the trial lawyer.

Chicago Winter Co. produces trial graphics, too, and worked for the prosecution in the Conrad Black case.

S. Richard Carden

When S. Richard Carden tried the patent infringement case *Trading Technologies International v. eSpeed* here last fall, the teams of lawyers used multiple video screens of different sizes to show graphics to the jury.

The lawyers also had “wireless, real-time court reporting,” he said.

This means that as a witness testified, the court reporter’s transcript of what the witness said rolled almost simultaneously on

computer monitors.

“It is relatively new,” Carden said. Lawyers used to wait for transcripts after testimony for the day was completed.

“It’s a real nice benefit to have it rolling there. You can mark particular issues as you go along, for cross or re-direct.”

Asked how a lawyer could observe a witness and read a moving transcript at the same time, he answered, “Usually the person who’s handling that witness would spend most of the time just watching him. They don’t tend to watch the transcript that much.

“One of the younger attorneys is going to be following the transcript more to see what issues you need to follow up.”

With technology, stuff happens.

“For about three hours in one day we got a transcript of another trial going on in the building” instead of their own trial. “The change was quite a shock.”

To show graphics, Carden said, the lawyers in the *Trading Technologies* case used one giant screen (said by one participant to have been 10 feet wide) and at least five additional 40-inch plasma monitors throughout the courtroom.

Carden is a partner in Chicago’s McDonnell, Boehnen, Hulbert & Berghoff LLP.

“The plasmas showed the same thing as the large screen,” he said. “The one between the witness box and the jury was mainly so that the jurors had an alternate to the large screen.

“But we would often have witnesses come out of the witness box” to refer to the nearby plasma monitor as they testified, he added.

“The big screen has been around or a while,” he said. “Having that many monitors is more recent.”

To design graphics for that trial, Carden said, his firm used The Focal Point, headquartered in Oakland, Calif.

G. Christopher Ritter

A former trial lawyer in San Francisco, G. Christopher Ritter of The Focal Point is a big believer in Adobe Flash technology for the courtroom.

Flash enables a lawyer to show graphics and videos to the jury in a variety of ways, similar to an Internet Web site.

By contrast, Ritter describes Power Point presentations as “linear” and limited, slide 1, slide 2.

Ritter told Legal Tech Newsletter last year

continued...

that “the use of Flash to create 2-D animations for the courtroom is exploding.”

These include animated graphs that show data points moving; animated patent figures based on line drawings from a published patent; and “How Things Work Animations” that show the parts of a machine or process working — or failing.

Ritter said he and his firm also use low-tech.

“Clearly high-tech stuff because it tends to be a little more expensive to do tends to be on the high end” and is found in “white-collar crime cases, complex civil litigation cases, intellectual property cases,” Ritter said.

“I’m also amazed,” he added, “that as the cost comes down, there is virtually no case that could not benefit from having some form of trial graphics,” even if only white boards and blowups.

“It not only makes it easier for the jury to understand. Lawyers that think visually really refine their case and make it easier for themselves to understand and it makes them better teachers.”

Old-fashioned white boards that one writes on with erasable, colored markers, or flip charts on an easel that one writes on and flips the pages, are still among “the most powerful tools one can use in the courtroom,” Ritter said.

The lawyer’s aim is to give the impression “that you’re creating these things spontaneously,” Ritter said.

“The jury sees itself as part of the process ... and will pay attention as you create on the white board or flip chart. If you see somebody up at the blackboard writing, there is a natural tendency to associate that person with being a teacher.”

Ritter said he and his firm come up with “metaphors and analogies” to help people “visualize what it is you’re talking about.... We make the message conform to the media.”

He also advises not to use too many graphics.

“The important point is not to let the great facts be buried by the good facts. Always let the great facts stand out.”

Christopher J. Lind

When “the tech wave” started in the 1990s, with computers, software and LCD projectors used to show evidence in the courtroom, many trial lawyers who were in their 50s and 60s were reluctant to try it.

This is according to trial lawyer Christopher J. Lind of Bartlit, Beck, Herman, Palenchar & Scott LLP, who is 39.

The hesitation of many lawyers to embrace technology gave an initial advantage to those who could use it.

Today, he said, the new gap is “Who’s running the show?”

Many lawyers now use technology in the

courtroom, “but they’re not running the computer,” Lind stressed. They rely on an assistant who is a paralegal or a litigation consultant.

Such a lawyer might say, “OK, Mr. Witness, lets talk about the contract.”

“They’ll turn to the back of the courtroom and ask their assistant to put up a document on a computer projector.

“So what you get is half the energy in the courtroom is put into the discourse between the lawyer and paralegal. The lawyer says, ‘What page are we on? Put up the right page. Can you blow up that paragraph? Highlight that section?’”

This is “inefficient, a distracting waste of time,” Lind said.

The lawyers at Bartlit, Beck, according to Lind, not only try to operate all of that themselves, “but to do everything that I’m talking about in real time in front of the jurors live.”

“You see the lawyer’s cursor on the screen turning the page, and you can see the cursor outlining the paragraph so the paragraph gets bigger, and you see the lawyer dragging the cursor across the screen to highlight the word.

“It’s a lot more effective,” Lind said. “It removes some of the mystique and some of the Wizard-of-Oz nature of technology that can be disconcerting to the jurors.... It adds to the credibility and the authenticity of the process.

“Another downfall with what a lot of lawyers do,” Lind added, is to present a prepackaged video program “all done in advance.”

If the lawyer is not doing anything but showing a “movie,” in his opinion, jurors are likely to tune out.

Lind said he uses as a graphics consultant Dan Winter of Chicago Winter Co. to help “take large amounts of information and our key points” and create “graphics and demonstratives to convey that information in a graphical, simple, clear format.”

“They may have designed it behind the scenes,” he said, but “we never use them to actually run the display.”

According to Lind, trial lawyers can use the technology themselves if they use it regularly. The latest gadgets are not necessary. “We use simple, off-the-shelf, relatively inexpensive software and equipment. It’s really the implementation ... that makes the presentation.”

John D. Worland Jr.

Courtroom technology “has changed

rather dramatically during my career,” said John D. Worland Jr., who has been trying cases since the early 1980s.

But to take advantage of this technology today, he said, a lawyer may need the help of graphics experts.

A supervisory trial attorney for the Securities and Exchange Commission in Washington, D.C., Worland said he started trying cases in the era of flip charts and poster boards.

“What was considered high tech at that time was if you had an overhead projector that could use transparencies,” he said.

An early, big change, he said, was the videotaped deposition, which he first used in 1992.

Still, to get an analog videotape ready for trial required up to 48 hours’ advance notice to the videographer to cut and paste.

And it was impractical to use a contradictory videotaped statement to impeach a witness on cross-examination. It took 45 minutes to fast-forward to the right spot.

Today, with digital video in a computer, Worland said, you can confront a witness with his contradictory statement on video in 10 seconds.

Also today, documents, paper exhibits and graphics are computer-projected on the same screen.

“You can now, through things like PowerPoint, move visuals much more quickly.”

For the jury, “you sequence it right to say something and then show them something and hit both parts of the brain at the same time with the same idea — without taking unnecessary time.

“But you have to have the ability, and frankly, oftentimes the graphics experts to help you,” Worland said. “This is their business, communicating with images.”

Worland said that when he tried *SEC v. Koenig* in Chicago in 2006, a \$6 billion civil fraud case, he used a giant screen “18 feet by 14 feet ... almost the size of the jury box.”

And he used The Focal Point as graphics consultants.

“Because it’s so potentially valuable, you have developed firms ... who are experts.... They can help the attorney come up with a visual presentation to go with his opening, or to go with his closing, or to go with particular witnesses, especially expert witnesses.

“Those three areas, opening, closing, expert witnesses — it gives you a power to communicate with the jury that exceeds anything we had when I started out.”

You sequence it right to say something and then show them something and hit both parts of the brain at the same time with the same idea — without taking unnecessary time.
