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6 New Technologies To Help You Win At Trial

By **Cara Salvatore**

Law360, New York (March 23, 2015, 3:33 PM ET) -- It wasn't so long ago that color trial exhibits were considered so groundbreaking that they were cause for flare-ups between opposing counsel. But today attorneys can whip out take-you-there interactive graphics and 3-D printing.

Lawyers who haven't kept up may be dazzled by competitors who are comfortable with cutting-edge tech. If the goal of a trial is to persuade, then the storeroom of persuasive tools now holds more options than in any prior era. New technology seems like its own form of magic when juries can be virtually taken to the scene of a chemical spill or shrunk to the perfect size for exploring a 20-millimeter medical device.

"It's moving at an alarmingly fast rate, and the implications are potentially dramatic in terms of trial strategies," said Phil Anthony, the CEO of trial-consulting firm DecisionQuest.

"You don't have to go back that many years to the point at which many trial teams would object to the use of demonstrative exhibits that were in color — I'm talking, like, 30 years ago," Anthony said. "But the argument was, well, you can't show a demonstrative exhibit in color, because that's going to be prejudicial to the jury."

Here, we talk to experts about the new technologies every lawyer needs to know to win at trial.

Interactive Graphics

Consider a recent environmental suit with a four-month trial. A company was accused of polluting a large swath of a New Jersey town by spilling chemicals. In an earlier era, perhaps the jury would have seen a bird's-eye map of the town with a graphic overlay showing how far pollution had reached.

But instead, the jury was treated to a crowning exhibit that took legal support company Magna Legal Services a year to create: a three-dimensional computer model of the entire town, several square miles' worth of land, according to Chad Graf, Magna's senior graphic consultant.

It was "used in the courtroom to virtually walk the jurors through that entire town so they could go to any point in the town and see what the terrain looked like at that point," Graf said. "We kind of created that virtual world for them."

The jury could fly through different parts of the model on their individual computer screens.

They could pick any property they saw and view property data, and toggle different layers of the model, like trees and property lines, on and off.

With advanced interactive graphics, "you're not starting from scratch modeling something like that with pictures," Graf said. "It was all packaged together so that they could navigate in and out of any part of it as they needed to."

3-D

Exhibits like the town model are largely made possible by enhanced data collection at the site of the alleged harm. When first responders, insurance adjusters and others on the ground use state-of-the-art collection, like 3-D scanning, trial-support businesses can turn it into something unique for the courtroom. Some on-site data collection is even starting to be done via drones, Graf said.

"If there's a hurricane, the insurance company will go out and use those to collect data and see damage to properties," Graf said. "It's easier than sending somebody out in a helicopter or getting somebody on a roof."

As every link in the data chain becomes more robust, the members of the jury may find themselves walking off the street into a rich sensory world.

There's another type of 3-D technology being brought into trials as well now, too — custom 3-D printing.

Graf said his company helped prepare a large-scale three-dimensional model of a medical device that in real life was only 20 millimeters long. At the larger scale, "it can physically be in the courtroom and jurors can figure out how it works and see the pieces."

Video Screens and Touch Screens

Even more mundane advances make for a striking before-and-after.

Advances in graphics processing have already allowed remote depositions via Skype-like technology to become so common that they're almost unremarkable, according to Marty Sexton, a marketing executive at Polycom. So too have video screens taken a mammoth role, one that might have been unimaginable in the 1990s, when video screens were common in entertainment settings but rare in hidebound functional settings like courtrooms.

In tech-friendly courtrooms, jurors have their own individual video screens at their seats. A courtroom even more often has a large screen, perhaps as much as 100 inches, to show information and exhibits.

In the witness box there may be another screen, sometimes a touch screen. And lawyers can use it during questioning, asking the witness to identify or select information by pressing the screen.

In the experimental McGlothlin Courtroom at the College of William & Mary's Center for Legal and Court Technology, a proving ground for court technology, the chief podium is outfitted with a touch screen.

There, whoever has the floor can not only call up slides or videos but also draw on the screen. Those drawn movements then show up on the courtroom's other monitors as

colored shadings — like what you might see during a football game or on CNN on election night.

The McGlothlin Courtroom has video screens for the witness, judge, jury and both sets of lawyers

Alex Hagan of Ellis & Winters LLP said touch screens are piquing lawyers' interest. A touch screen can be used effectively during witness questioning, he said.

"The witness is asked to point and circle and mark on the exhibit in front of the jury; the witness goes up and marks on it," Hagan said. "It's a very impressive, slick-looking monitor."

Tablet-Based Courtroom Control

There are some innovative control technologies for lawyers' personal devices.

Hagan said he "would not be able to function" without his iPad, finding it the best place to pack in PDFs for review, emails, and exhibits to show the jury. Hagan said iMovie is the perfect example of an app that helps out in the courtroom.

"It's just a very clean way of showing a video at trial," Hagan said. "You can control the speed that the jury sees the video [at], ... you can do that right on your iPad and have it hooked up directly into whatever the equipment is in the courtroom, or by way of Apple TV, which you can carry in with you."

But iMovie isn't the only such app. As the climate of tech acceptance heats up, apps are flooding into the space, Hagan said. Trial Director and TrialPad are two that let lawyers not only organize files and exhibits in a system, but also pull them up and send them to courtroom monitors, highlighting and blowing up the most crucial parts.

"This industry produces apps faster than anything," Hagan said. "Every time I look, there are new ones in these same categories."

When the problem of showing jurors literally any kind of media becomes trivial, as it does with the apps now available, "all of this results in a much richer learning environment," Anthony said. "Everything is far more instantaneous and transparent."

Instant Transcription and Instant Video Playback

"Instantaneous" is not hyperbole when it comes to the speed with which lawyers can create new evidence on the fly. Thanks to new transcription technology, trialists can back-reference earlier slices of testimony. If a witness said something that sets off an alarm, Anthony said, trial team members sitting in the courtroom can immediately keyword-search the transcript and alert their colleagues at the bar that a contradiction has cropped up.

Speech-to-text has gotten good enough that using it can be like bringing along a little army of assistants who catalog and tab everything that's said.

"In addition to the lawyers who are trying the case, there's also a second team of lawyers who are following the streaming transcript on their computer," Anthony said. "[W]ithout the technology, you couldn't possibly think that fast or reference the documents."

It doesn't stop there; sometimes recorded words are the most effective way to trip up a witness, but video of the resulting fall will go farther with the jury than just a reminder that the fall happened. Lawyers can play back trial video for the jurors and let them relive those moments.

"This is interesting because the technology is allowing the jurors' memories to be freshened, perhaps," Anthony said. "What better way to make your point than to show something that actually occurred? All the jurors present know that they just saw that."

Sexton said it also helps with deposition video review.

"Before having this type of capability you would have to watch a three-hour recording over and over," he said.

Holograms

The variety of technologies that lawyers can bring into a courtroom now — as they often must, because most courts don't yet have the appetite or the budget for fancy tech infrastructure — is already dizzying. But just over the horizon are budding opportunities in 3-D modeling, holograms and virtual reality, experts said.

"There aren't any holograms being presented in trial yet, but it's coming. It's inevitable," Anthony said. "The first time someone walks into a trial with a hologram, the other side's going to go, 'You can't show that, that's prejudicial, it's artificial.'"

"But the reality is, technology continues to advance, and with it the ways in which trials are presented to laypeople," Anthony said.

Meanwhile, as trial attorneys bound ahead, court administrators may struggle to keep up.

"Some of the state court judges in North Carolina are more tech savvy than lawyers are," Hagan said. "[But also], we have courtrooms here that when I call down ahead of time and say, 'Tell me what technology you have,' they say, 'Somebody left a VCR here 10 years ago.'"

--Editing by Jeremy Barker and Mark Lebetkin.