

Experts 2.0 Using Technology to Put Your Expert Witnesses in the Spotlight



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Wearables, Google Glass, Apple Watches and iPad Pros are all the rage these days. But do they have a place in your practice—particularly when it comes to working with experts?

We believe the answer is yes.

We often joke that lawyers would still be using quill pens if they could. The legal profession can trace its origins back thousands of years. Too often it seems that precedent dominates not just case law, but also the tools that lawyers use.

That's not to say that technology always makes the practice or the presentation of experts better. It doesn't. For all of the successes we've had with technology, we've had more than our fair share of tech fails. By acting as a technology guinea pig and trying new ways to innovate in our practice, we've seen the good, the bad and the ugly. The use and presentation of expert witnesses, however, is one area in particular where we've seen technology shine.

Moving From Words to Action

For more than five years, we've used iPad-based video demand packages to reinvent conventional demand letters. With the iPad, we present video settlement demands

that showcase our clients as well as case documentation, exhibits and experts. We send the tablets and Bose noise-canceling headphones to opposing lawyers and decision-makers in metal briefcases.

We generally create these presentations in-house, combining video interviews, photos, diagrams, explanations from our expert witnesses and com-

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puter-generated imagery (CGI) to build a picture of, or even re-create, the events in question.

There's a lot of power that comes from giving opposing parties, mediators and decision-makers access to the individuals you intend to present at trial. A great report from an expert says nothing about how compelling a witness will be with a jury. We know that's what decision-makers want and need.

If a picture is worth a thousand words, what's a video worth? We often prepare these packages before a lawsuit is ever filed. This frontloaded approach forces the decision-makers to view our story while the case is still fresh. Equally important, if the matter isn't resolved, we're in a position to swiftly move forward. That advanced preparation lets us dictate the pace of the matter and any potential litigation.

You might be shaking your head, asking, "Aren't you giving the opposing party a roadmap to your case?" Yes, we are. But even if we're tipping our hand, we're showing that we're willing and able to devote the resources necessary to create a product like this.

Getting Attention

We've heard stories that opposing firms have actually gathered their teams to view our presentations. As a lawyer, that's invaluable. You're not just a letter in a pile. You have everyone's attention and, more significant, our clients and expert witnesses have their attention too.

Accomplishing this requires an investment in time and money. To feature our clients and expert witnesses in the best possible light, we work with animators who create reconstructions and animations that are included in a video. Ultimately, when we

send the iPad at the pre-litigation stage, we let our opposing party be the judge. Because of this, our experts must shine.

Want to make your own video package on a budget? The video camera on the latest iPhone is more powerful than high-end devices from five years ago. By making a modest investment for a tripod and a microphone, you're ready to get started.

Rethinking Your Expert-Screening Process

But how do you find a tech-friendly, camera-ready expert? Our process typically starts by combing through our database of trial experts here at the firm, reaching out to tried-and-



Attorneys Marc Lamber (left) and James Goodnow hold a gift from a successful mediation: an Atari 2600 home video game console, circa 1977.



true sources from past cases or by scouring one of the many excellent listserv databases. Keep in mind, however, that we are looking not only for knowledgeable conclusions to bolster our case; we also need to know how the expert performs under the big lights.

For out-of-town experts, we'll conduct our interviews via Skype. We're obviously looking for substantive knowledge that will make the expert report and deposition strong, but we also want to make sure that the opinions, analysis and conclusions are presented in a way that connects with the viewer. If a rock star expert witness can't communicate and is awful on camera, we're probably going to our next source. If they're bad on camera, chances are they might be bad in front of a jury.

We're not the only firm using technology in these ways. One of our most memorable recent experiences was working with John Torgenson from Torgenson Law and Kyle Hallstrom of the Hallstrom Law Firm on a large-scale multimedia mediation package that included numerous experts. In addition to our traditional iPad video package, we created an encrypted, secure website for the opposing counsel that had expert opinions complete with interactive, graphical depictions of the case and video.

The mediation package led to an uninterrupted 26-hour mediation—the longest in the history of the JAMS New York office. In a nod to our use of leading-edge technology and how much of an impact it made, the mediator sent us a piece of vintage technology: an Atari 2600 home video game console, circa 1977.

Leveraging New Technology

3-D printing technology is another area that can help both you and your experts. About two years ago, we made the investment in a 3-D printer, believing we would probably just have a novelty device to help us make holiday gifts and birthday presents. We were wrong. That printer has proven to be an invaluable tool to advancing our clients' cases.

Involved in a product liability case where the question is how a product could have been differently designed? Forget the whiteboard; work with an expert to create the hypothetical product. Eliminate any and all doubt in a jury's mind about how the alternative device would work by simply giving it to them. Provide something they can touch

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and feel. With 3-D printing technology, this is possible—even on a budget. With basic 3-D printers priced well under \$1,000, the technology exists to make a difference.

Most recently, we've made an investment in a 360-degree camera. This device lets you film a 360-degree virtual world in motion. Imagine classic 360 real estate tours, but instead of static images, it actually moves.

How could this be helpful? In our line of work, we often need to show decision-makers what a party's line of sight looked like at an accident scene. Rather than leaving that to still images or the imagination, we can

show a moving scene that decision-makers can navigate. It creates a virtual reenactment of an event in a way never before possible.

Experts still are necessary for either of these types of devices. Although it'd be great if we could just sketch a product or film an intersection in a few minutes and then present it to a jury, that's not going to happen. You still have to think about evidentiary limitations and foundation. With each of these tools, it's necessary to work with experts to ensure that what you present is accurate and will pass judicial scrutiny.

Take the Plunge

When used properly, technology has the potential to take your presentation of expert witnesses to new heights. The key, however, is *when used properly*. Technology is a tool that magnifies your approach to the case—whether good or bad. You can't slack on your legal research and expect technology to save the day. It won't. There's no substitute for creative thought, careful research and an investment of time. If you have a solid legal foundation, however, technology can help others more effectively understand the perspectives, thoughts and opinions of both you and your experts.

So what are you waiting for? Drop the quill and scroll, and enter the digital age. We're living in the future. It's time to embrace it.

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