

USING COMPUTERIZED EXHIBITS AND VIDEO IN THE COURTROOM

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In any complex case, computer-generated presentations are the ever-growing norm rather than the exception. Video depositions, once cumbersome, though effective, for impeachment can now be digitized and ready to pull up on a moment's notice. As improvements in technology make trial software less costly and more user friendly, it is imperative that litigators and courts understand and accept the use of technology in trials.

Although a wealth of literature exists regarding the utilization, pitfalls, and acceptance of technology, and all agree that the use of technology in litigation is rapidly expanding, there is little reported evidence in court opinions. In an opinion regarding the admissibility of electronic demonstratives, the Eastern District of New York, however, did examine the use of computers and technology in the courtroom. See Verizon Directories Corp. v. Yellow Book USA, Inc., 331 F.Supp.2d 136, 142 (E.D.N.Y. 2004). Dismissing the notion that computers and technology turn a trial "into legal smoke and mirror laser shows, lacking real substance," the Court noted that the inundation of personal computers and technology in society make today's jurors more accepting of technology. Id. Instead of resisting the increased use of technology in litigation, courts should embrace technology's ability to break down complex cases. Id.

As for depositions, courts have long held that "the use of videotaped testimony should be encouraged and not impeded because it permits the jury to make credibility evaluations not available when a transcript is read by another." Weiss v. Wayes, 132 F.R.D. 152, 155 (M.D.Pa. 1990). Efficient and relatively inexpensive software, such as Trial Director®, improves the use of video depositions at trial. By digitizing the deposition and syncing the video to the deposition transcript, a lawyer can pull up specific segments of a video deposition on a moment's notice and

allow the judge and jury to hear and see the deponent while simultaneously reading the transcript. As recognized by the Federal District Court in New Jersey, “incorporating a video deposition into such software to impeach the witness at trial will ordinarily be less time consuming and more effective than fumbling back and forth referring the witness to lines and pages of transcript.” Fanelli v. Centenary College, 211 F.R.D. 268, 271 (D.N.J. 2002).

One of the few topics in which the burgeoning use of multimedia exhibits in trials is readily visible is seen in court decisions regarding reimbursement for exemplification costs under 28 U.S.C. § 1920(4). Section 1920 expressly identifies the expenses a court may tax as costs against a losing party. For example, trial exhibits that are “necessarily obtained for use in the case” may be allowable costs under the “exemplification” umbrella of § 1920(4). Unfortunately, Congress’ failure to define the scope of “exemplification” has resulted in a split in the circuits regarding whether innovative technologies, such as computer animation and video exhibits, are taxable under § 1920(4). The intrinsic value of this technology in complex litigation supports its increased use. *See, e.g., Cefalu v. Village of Elk Grove*, 211 F.3d 416, 428 (7th Cir. 2000) (finding “no limits inherent in the term ‘exemplification’ that would . . . preclude [a court] from compensating a party for . . . computer-based, multimedia displays.”); Goss Int’l Corp. v. Tokyo Kikai Seisakusho, Ltd., No. C00-35 LRR, 2004 U.S. Dist. LEXIS 10164, at *34 (N.D. Iowa June 2, 2004) (awarding costs of demonstrative exhibits and the cost of the software used to provide the graphic presentations during trial); *contra, e.g., Arcadian Fertilizer, L.P. v. MPW Industrial Svs., Inc.*, 249 F.3d 1293, 1297 (11th Cir. 2001) (holding videotape exhibits and computer animation do not fall within the scope of exemplifications and therefore are not compensable).

Regardless of their willingness to tax the costs of technology on the losing party, courts have recognized the value of multimedia in litigation. In a 2000 opinion, the Seventh Circuit

espoused sophisticated types of multimedia presentations that may allow parties to present their evidence in a more effective manner. See Cefalu, 211 F.3d at 428. For example, technology that allows for the crisp enlarging of a crucial document may be the only practical means of permitting a witness to point out the forensic features of that document to the jury. Id. In the ongoing battle to streamline federal cases, the Northern District of Iowa noted that the enhanced organization provided by digital storage of exhibits can expedite a party's presentation of issues and make the trial more efficient. See Goss Int'l Corp. v. Tokyo Kikai Seisakusho, Ltd., No. C00-35 LRR, 2004 U.S. Dist. LEXIS 10164, at *34 (N.D. Iowa June 2, 2004). Multimedia presentations can allow an attorney to communicate more efficiently, effectively, and powerfully.

However, even courts willing to award the costs of multi-media presentations and exhibits to prevailing parties may hesitate to award the full costs of this technology to ensure the losing party is not paying for the victor's "glitz." Parties hoping to recover their costs may employ particular caution in bench trials. Where multimedia exhibits that condense or simplify evidence may be helpful for a jury, televising exhibits that are mere reproductions of hard copy documents may not receive warm reception in bench trials. See BASF Corp. v. The Old World Trading Co., No. 86-C-5602, 1992 U.S. Dist. LEXIS 13691, at * 11-12 (N.D. Ill. Sept. 11, 1992) (rejecting costs in bench trial for burning exhibits onto laser disk for televised display when hard copy documents were also produced to the court).

Further Annotations

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