

TECHNOLOGY ON TRIAL

Defusing Powerful Animation

Defense team turns plaintiff's tech to its advantage.

By John Bringardner

ON February 4, 2002, at 8:15 p.m., Kevin King was crossing the street in West Hollywood, Calif., on his way home from dinner and a few drinks. Karen Dillon, 44, a Los Angeles attorney who practices at Alschuler Grossman Stein & Kahan, approached the intersection of North Crescent Heights Boulevard and Fountain Avenue in her black Porsche Boxster and made a left turn on a left arrow.



Klein

Dillon's car hit King, a 42-year old costumer for 20th Century Fox, in the intersection. The vehicle was traveling somewhere between 20 and 30 miles per hour, and the impact threw King into the windshield. He was taken to Cedars-Sinai Medical Center, where he spent about

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A screen shot of one of the plaintiff's animations. See www.lawtechnologynews.com for full animation.

10 days in the intensive care unit, followed by an additional week in the hospital.

King sustained a 5mm subdural hematoma, a left frontal lobe brain contusion, a broken hip, and required surgery to repair broken bones, said his attorney Gerald Klein, of Newport Beach's Klein & Wilson.

THE TRIAL

King v. Dillon, No. SC 071846 (Calif. Superior Ct., Los Angeles Co., West District, filed Aug. 13, 2003) went to trial in Santa Monica on August 13, 2003, before judge Valerie Baker.

It looked like a difficult case

to defend.

The plaintiff's medical bills totaled about \$200,000 according to the court papers, and he claimed approximately \$120,000 in future medical bills for anti-depressant medications and psychiatric and psychological treatment.

Larry Langley and Pamela Shafer, of the Law Offices of Larry Langley, represent Safeco Insurance, and were charged with the task. They called upon San Francisco-based Litigation-Tech to help with trial support.

Michael Skrzypek (pronounced "sha-peck"), senior litigation technician for Litigation-Tech, says the first challenge the team faced was to "counter the prevalent misconception that a pedestrian in a cross-walk always has the right of way." They also recognized the inherent difficul-



Langley



Skrzypek

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ty of defending an attorney driving an expensive sports car. "Not a very sympathetic character to most juries," he conceded.

Klein predicted the case would be a slam dunk. Supporting his beliefs were two mock trials, that both delivered a finding of 90 percent liability for the defendant.



The accident intersection, from one of the defense team's exhibits.

TECH FIRST-TIMER

Langley, a 62 year old Oklahoma-born attorney, is the first to say that he had never used anything more technically complex than a white-board in previous trials. But Langley knew that his competition, plaintiff attorney Klein, had a reputation of being "very technologically oriented."

"Klein had made it clear that he was going to use a lot of video depositions. We had to keep a level playing field," Langley said.

Langley approached Litigation-Tech after hearing about the company through William Smith, a partner at San Francisco's Abramson Smith Waldsmith, who had worked on a case with Litigation-Tech president Ted Brooks. Skrzypek was assigned to the case, but confesses to some initial reservations.

"Langley has a comfortable, folksy personality that some would think wouldn't mesh with a technical opening presentation," recalled Skrzypek.

For his part, Langley said he had much to learn. Both sides used Microsoft Corp.'s PowerPoint for their

opening statements.

Skrzypek created JPEGs from PowerPoint slides, put them into inData Corp.'s TrialDirector software, and interspersed video clips, exhibits, and photos for the presentation.

But it took the avuncular lawyer a few moments to remember his tech support, recalls Skrzypek.

"For the first 10 minutes or so of the opening, Larry didn't refer to me or ask me to start the presentation," Skrzypek said.

"I thought he had decided on the fly to revert to what was comfortable to him, just talking to the jury. But then he glanced over to me and said to the jury, 'Oh yeah, I've got some photos and things to show you about what I've been telling you.'"

"This set the tone for his use of the technology throughout the trial," reported Skrzypek.

"It wasn't slick, but he managed to integrate it into his style, rather than trying to change his style to suit the technology."

The defense technology centered

on a TrialDirector database, with hundreds of exhibits, dozens of demonstrative graphics and photos, several gigabytes of video depositions, and accident reconstruction animations.

The defense decided to use a rear projection screen that "allowed the projector to be in the empty gallery rather than the crowded bench area,"

explains Skrzypek. They

set up four flat panel screens for the judge, witness, and counsel tables, and used speakers, with controls integrated into a switcher.

ANIMATION

The clincher, as Langley and Skrzypek tell it, was when plaintiff attorney Klein played an animation of the incident, which was created by traffic accident reconstructionist David King, of MacInnis Engineering Associates, based in Los Angeles.

King used PC Crash software, which helps users create 3-D collision simulations and reconstructions. His animation was used as the cornerstone of the plaintiff's case, Skrzypek explained, and was based almost completely on defendant Dillon's deposition answers.

It was clear that the plaintiff's side thought the recreation would be very damaging to her credibility, he said.

But the defense team managed to defuse the impact of the animation. Langley played the animation in

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slow motion throughout his cross of the reconstructionist. He also played it during his closing argument, stopping it at key points to question the assumptions the plaintiff used creating it.

“His ability to replay the animation and put our side’s spin on it undercut the plaintiff’s representation that the animation represented how the accident truly happened,” said Skrzypek.

Langley was able to point out how the animation was “so totally different from the actual action,” said Skrzypek.

For example, the plaintiff was wearing dark clothes at the time of the accident, but in the animation he was depicted as a bright yellow figure. The animation also appeared to be in daylight, with no other cars in sight, when in fact the collision had taken place in the evening with multiple cars around.

Langley also argued that the plaintiff’s counsel had misconstrued critical testimony from defense witness Anthony Stein, president and technical director of Safety Research Associates Inc., based in La Cañada, Calif., who was qualified as an expert in pedestrian and vehicular movement and human factors.

Langley was able to convince the jury that Klein had “taken extreme liberties with the actual testimony and opinions of Dr. Anthony Stein,” said Skrzypek.

DEFENSE VERDICT

The 12-person jury, after a heated deliberation, ultimately rendered their verdict, finding for the defendant. The jury was apparently

swayed by defense arguments that Dillon had initiated her turn on a green left arrow and had no reason to anticipate that a pedestrian would be crossing against her protected left turn. Langley also argued that Dillon had insufficient time to react and stop in order to avoid hitting King, even if she did see him prior to impact.

MONDAY MORNING QUARTERBACKING

A motion for a new trial was deliberated for three hours before being denied. Klein, 48, says he was devastated by the loss, and was reluctant to talk about the verdict in detail. He reports that plaintiff King has since declared bankruptcy, and still has a golf ball sized lump on his head and permanent brain injuries.

Klein used Verdict Systems’ Sanction trial presentation software to organize his case, and though it crashed once during the trial, he remains confident in his technology. He recounted post-verdict conversations with jurors who told him that the video did not make any difference in their decision.

Klein blamed the loss on California’s tremendous hostility towards personal injury cases, particularly in Santa Monica (despite its reputation as a very liberal community). He also criticized himself for making a mistake in jury selection, allowing one juror to be seated whom he felt was hostile to his client.

In the end, Langley believes that his use of technology made his arguments much stronger. The ability to show text beside a video deposition, highlighting and emphasizing certain

words made everything much faster and easier, he says.

The lawyers did face one “level field” challenge: Judge Baker put strict time limits on the trial: 22 hours per side.

It was a challenge. “You each have 22 hours for opening, closing, everything, and because this was a brain damage case, there were a lot of cat scans to go through,” said Langley.

On Langley’s wish list for future trials is technology (perhaps video) that could capture images of witnesses as they physically point to cat scans. “[Klein would] go through the scans and ask his [expert] questions, and there was no way to make a record of what he’s looking at — without a freeze frame.”

LESSONS LEARNED

Technology was a cornerstone in *King v. Dillon*, yet this trial also reminds us that technology alone does not make the case.

Langley was able to turn the tables on the plaintiff by deconstructing their animation. And after this case, Klein may want to explore jury selection software or consultants.

The use of litigation support technology bolstered everyone’s arguments.

Ultimately, says Skrzypek, “I think the combination of his polite, deferential, Southern way of speaking combined with his low-key use of technology was extremely compelling to the jury.” **LTN**

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