

LEGAL TECHNOLOGY

Ready or Not

Cutting-edge courtroom technology has moved from the future to the present, so today's lawyers had better be prepared. **By Daniel R. Miller and Ted Brooks**

In the motion picture "Minority Report," a thriller set in 2054, Tom Cruise plays a police investigator who uses a dazzling array of high-tech video gadgetry in a "virtual courtroom" to convince satellite-conferenced judges to issue arrest warrants for murderers before they commit their crimes. Arresting the criminals before they act effectively eliminates crime.

Sound far-fetched?

While eliminating the "actus reus" (or physical act) element from criminal prosecution is not likely to occur any time soon, the advent of high-tech video gadgetry in civil courtrooms is moving at warp speed and producing amazing results.

Take, for example, last year's \$975 million settlement in *Western MacArthur Co. v. U.S.F.&G.* The settlement, reached after three months of trial in Alameda County, is one of the nation's largest asbestos settlements ever. Under the settlement, St. Paul, the successor-by-merger to U.S.F.&G., has agreed to resolve 20,000 personal injury asbestos claims filed from 1982 through the present, plus additional future claims.

Before the settlement, Superior Court Judge Bonnie Lewman Sabraw requested that the trial blend plaintiff and defense evidence in a manner easily accessible and understandable to the jury. Sabraw's request was motivated by the volume of material in the *Western MacArthur* case.

Her request also was motivated by the efficiency of a digital document trial, which allows display of exhibits to all parties simultaneously, highlighting and zooming in on selected material in real time as opposed to passing several binders to and from witnesses, judge, jurors and counsel.

To fulfill Sabraw's request, the plaintiffs' trial team of Brobeck, Phleger & Harrison; Faricy & Roen; and Miller, Starr & Regalia, used a myriad of cutting-edge legal technology systems.

Existing Databases and Software Selection

To approach the "Technological Mother of All Cases," the key is to develop a usable database and select an excellent software program for its management.

Initially, the *Western MacArthur* trial and technology team reviewed existing databases, a process that has evolved rapidly in recent years. Because the case spanned 12 years, outlasting much of the technology used at its outset, the challenge was to identify technology capable of working together seamlessly.

The existing databases, some developed years ago, had to be used in preparing exhibits for trial. In some instances, much of the data was unusable; however, every effort was made to avoid duplication of labor. After review and need analysis, TrialDirector software was selected for the *Western MacArthur* case; in other matters, tools such as PowerPoint, Sanction, Trial Pro or Visionary may be employed.

Exhibit Identification and Database Development

With the parties producing 1 million doc-

uments, plaintiffs' counsel's goal before trial was to cull the mass of potential exhibits into a manageable size, selecting and including only the most valuable and necessary documents as trial exhibits and developing a system for quick and efficient reference (typically a system of numbering).

Initially, documents were assigned a temporary point of reference, such as a file name. Though it was too early to assign exhibit numbers, documents were forwarded to a database developer for placement in an organized, searchable format, which later was converted to trial exhibit numbers by adding and completing a cross-referencing database field.

The methodology and software used resulted in the trial team's electronic presentation of 80 percent of the evidence. Only a few "hard copy" documents were used during trial, an astounding statistic resulting from a staggering technological feat, which combined the use of the following:

- 10 TrialDirector Databases (exclusive of several testing, export, import, Summation and Introspect case buildup databases);
- 105 GB digitized deposition videos;
- Combined video running time of 13 days, seven hours, 14 minutes, 44 seconds;
- Combined deposition excerpt running time of two days, 13 hours, 12 minutes, 53 seconds;
- 2,322 deposition excerpts (exclusive of hundreds used for editing);
- 100 videotaped deposition transcripts (exclusive of many taped but not digitized);
- 900 demonstrative graphic exhibits;
- 15.48 GB document data; and
- 164,204 TIFF images (all parties, exclusive of hundreds of thousands in case

buildup data).

With potentially thousands of exhibits proffered from each side of the table, the "paper management" of traditional documentary evidence for the trial would have been unworkable, to say nothing about repeated delays to the testimony and "flow" of trial.

Using this type of technology, any trial exhibit can be brought to the courtroom monitors within seconds.

Even better is the prepared argument, with exhibits, demonstratives and even deposition video clips, using bar codes or numbering systems to retrieve the materials. Often, particularly in instances of impeachment, all the preparation in the world will not uncover the "golden nugget." When a witness impeaches himself, the document must be available instantly and upon request. Thus, cross-referencing exhibit numbering systems is invaluable and worth the time and expense devoted to its development.

Exhibit Presentation

By the time the *Western MacArthur* trial started, the courtroom resembled a neighborhood Good Guys store. There were 23 15-inch, flat panel monitors (10 in the jury box, four at counsel tables, four behind counsel tables for supporting counsel and staff, one in the witness box, and one for the judge), with kill switches to disable the jury's view of exhibits not yet admitted into evidence. In addition, the parties used a 48-inch, flat panel, plasma display monitor behind the witness stand for reference by witnesses to documents and other evidence.

Despite the courts' encouragement, some lawyers fear, particularly in well-funded defense cases, appearing to be a



Goliath battling a David. With the average juror subject to intense multimedia exposure through television and the Internet, including viewing televised court proceedings, the "David v. Goliath" argument no longer holds water.

In fact, there are numerous jury polls which clearly show that today's jurors not only have no real concept of the costs involved in a world-class trial presentation but also appreciate the efforts of counsel to educate them on a subject matter to which they may have had no prior exposure.

Beyond the jury, the courts are encouraging use of technology, many installing a full complement of in-house presentation equipment. Whereas in the past attorneys might have gotten the "not-in-my-courtroom" response, now the courts view technology as a powerful enhancement to the proceedings, able to speed up the trial — a real concern with today's seemingly unending volume of litigation. Even in bench trials and arbitrations, the fact-finder is often found glued to the monitor, taking notes.

At the end of the day, the cutting-edge technology used in *Western MacArthur* could not turn back the clock to prevent the alleged wrongdoing that led to the filing of the lawsuit, but it certainly contributed to capturing a huge settlement. As evidenced by this example, choosing and effectively using the right courtroom technology is a powerful tool for success.

Daniel R. Miller is a shareholder with Walnut Creek's Miller, Starr & Regalia and represented Western Asbestos Co. in intervention. Ted Brooks is the founder and president of Litigation-Tech and led the technology strategy and implementation for Western Asbestos Co.