

A photograph of a woven basket filled with several ripe, red tomatoes. The basket is placed on a bed of autumn leaves in shades of brown, orange, and red. In the foreground, a green tomato vine with two unripe, green tomatoes is visible, slightly out of focus. A small green rectangular tag is tucked into the basket, featuring the text 'Home Grown Tech' in a stylized font.

**Home  
Grown  
Tech**

**A story of four firms and their in-house  
trial technology departments.**

By Janet Roberts

**Robert Curtis, Attorney**

Foley & Bezek  
Santa Barbara, Calif.

Six attorneys, one paralegal



Foley & Bezek specializes in commercial business litigation and prepares 95 percent of its trial presentation technology in house. Often armed with no more than a laptop, an Elmo and a projection screen, Curtis efficiently and effectively displays complex information to the jury during the course of a long trial. All he needs is an electrical outlet, a place to put the presentation screen and his firm's trusted paralegal, Colleen Connors, to run the software packages from the laptop and Elmo throughout the trial.

**Mark Reichenbach, Director of Litigation Support**

Milberg Weiss Bershad Hynes & Lerach  
New York

200 attorneys, more than 250 support staff,  
seven offices



As the newly hired director of litigation support for Milberg Weiss Bershad Hynes & Lerach, Reichenbach said bringing technology in house is cost effective because an in-house technology team gives a law firm an element of control over the technology the firm installs, and insulates the firm from the costs of overnight shipping and rush charges that are so prevalent when using outside vendors.

**Barry Gerstman, Attorney**

Sedgwick, Detert, Moran & Arnold  
New York

More than 300 attorneys, 30 Information  
Technology employees, 10 offices



Gerstman, author of the article "Trial Technology: Not Just for Seven-Figure Cases Anymore," [*Trials and Tribulations*, Winter 2003, by DRI] said he advocates the cost effectiveness of in-house trial technology preparation. At his firm, the economic benefits are passed on to the client. In-house employees are responsive to the attorneys' needs because they have no other clients. "We are at the top of their list," he said of his firm's IT employees. "They are available at all hours of the day, which is very helpful when going to trial on short notice."

**Andrew Hall, Practice Technology Supervisor**

Miller & Chevalier  
Washington, D.C.

115 attorneys in two offices



As practice technology supervisor for Miller & Chevalier, Hall said using technology in the courtroom greatly reduces a firm's reliance on paper and increases the level of service to clients. In addition to trial preparation, non-billable work, such as the creation of marketing and recruiting tools, can be valuable to a firm. By keeping everything in house, Hall's firm is able to effect better continuity for the various ongoing projects in the firm's different departments.

**A**lthough courtrooms across the United States don't yet resemble the electronics floor display at a local Best Buy, legal techno geeks soon will rule the hallowed halls of justice. More and more federal and state courts across the country are able to provide a user-friendly environment for increasing numbers of tech-savvy lawyers entering the courtroom with laptops, projectors, projection screens and other electronic gadgetry. A wide variety of visual presentations often accompany every aspect of the case, from opening, through evidentiary presentation to closing.

In the age of laptop computers, video games and cell phones, it's no surprise jurors expect to see technology used at trial. "The jury needs to be entertained," said Robert Curtis, an attorney with the Santa Barbara, Calif. firm Foley & Bezek. "Technology can spice up a boring presentation and help the jury to better retain the information."

Barry Gerstman of the New York City office of Sedgwick, Detert, Moran & Arnold, said he finds many of today's jurors have been raised in a multimedia environment and process and remember information better through a technological presentation. The legal team that presents its case with state-of-the-art computer graphics captivates jurors who return home to computers, DVDs and digital cameras.

Many law firms are taking on the task of creating presentations for trial in house, and some even have their own in-house trial technology departments. Creating high-level trial presentations is not limited to large firms. Many small- and medium-sized firms also are creating their own trial presentations with various trial tools and litigation support software available for tech-savvy law practices today.

**Necessary Tools**

To create captivating and compelling trial presentations in house, certain tools are necessary. One of the most popular programs is Summation, especially in cases involving many documents. The 8th Annual AmLaw Tech Survey listed Summation as the top litigation software, used by 111 of the 136 responding firms, with LiveNote/VideoNote, Microsoft Access, TimeMap by CaseSoft, DataFlight's Concordance, inData's TrialDirector and Sanction by Verdict Systems not far behind.

Curtis said his firm uses a combination of PowerPoint, Summation and TimeMap software, among others, to prepare for trial and to present during trial. Curtis said he also recommends Visio, a Microsoft Office product designed to help users clearly document, design and communicate complex processes and systems. He said he appreciates its ability to create charts that demonstrate the flow of information in complex cases. During one telecommunications case involving problems between multiple carriers in which consumer calls were routed through a computer, Visio helped Curtis show the judge a logical progression of what happened with each call.

Curtis said Summation is the firm's workhorse for its ability to code depositions and documents so they are available at the click of a button, and for allowing him to circle and highlight specific points for the jury on screen. He uses Summation from the start of a trial to its finish, and uses it exclusively to present evidentiary documents.

Gerstman said Summation's ability to combine discovery documents with a database management system is necessary for his practice, which is predominantly product liability and litigation based. He said he also likes working with Sanction II.

"It [Sanction II] pulls the different sources together, such as Summation and video presentations, and allows me to edit them quickly for my opening, closing and cross examination," Gerstman said. "Digitized video depositions can be used in Sanction II."

Andrew Hall, practice technology supervisor at Miller & Chevalier, a mid-size firm in Washington, D.C., said his firm uses database, image base and trial presentation software. "A good example of applying technology is our in-house electronic discovery intranet, developed by our manager of information systems, used for review of electronic data discovery before conversion of the data to images and databases," he said.

Former manager of litigation support for Pillsbury Winthrop's East Coast offices, and current director of litigation support at Milberg Weiss Bershad Hynes & Lerach, Mark Reichenbach said he has used PowerPoint and Summation, along with Concordance, JFS Litigator's Notebook, CaseMap and TimeMap for litigation support. "For an opening we often use the low-tech PowerPoint to give a down-home perception," Reichenbach said. "For the nuts and bolts and heavy lifting we use TrialDirector or Sanction. LiveNote and

## Obtain permission from the trial judge to use trial technology in his or her courtroom.

[RealLegal's] E-Binder products allow video capabilities in real time and are a big tool for people who are not wildly tech savvy because they are easy-to-edit designations."

### Cost Effective

The initial investment in a quality in-house trial presentation package can range from \$10,000 to \$15,000. Subsequent to the initial purchase, it's an economy of scale with little additional cost to the law firm, according to Gerstman.

Five years ago the cost would have been close to \$30,000, but now, PowerPoint is a standard part of the Microsoft Office Suite. Quality presentation software such as Sanction and Concordance retail for less than \$1,000, and mid-range scanners with automatic document feeders from Ricoh and Hewlett-Packard cost from \$1,500 to \$3,500. Basic image capturing software used to organize documents into a workable database can be licensed for around \$4,000. A digital projector can be purchased for \$1,500.

"The key basics needed are a digital projector, a laptop and scanning equipment," said Gerstman. "Software choices are above and beyond these basics, but once the initial investment is made, producing the technology in house is very cost effective. Even our Fortune 500 clients are interested in a cost-effective trial."

Reichenbach pointed out that many trial requests are last minute, and shipping reworked demonstratives overnight creates some of the heftiest charges. With modest scanning capabilities, the trial team can download late exhibits produced for an out-of-town trial, even if they are in the middle of nowhere. "For any major firm that wants to be competitive, some level of in-house capabilities must be implemented to control costs — especially overnighting costs," Reichenbach said.

The rush-and-hurry aspect of trial preparation has led Reichenbach to value software such as E-Binder and LiveNote,

whose basic capabilities allow him to edit synchronized videotape-to-transcript designations on the eve of a trial, then export them to Sanction or other types of trial presentation software. Reichenbach said the quick presentation-building trial technology makes possible results in profits for the firm, and also allows lawyers to adjust billing for cost-sensitive clients.

Hall said operating a litigation support department allows his firm to provide an increased level of service to its clients. "It may take some time to amortize the startup costs before the department breaks even or shows a profit. The ease of use due to the service being in house is also a great plus for many attorneys and paralegals," he said. "Also, doing nonbillable work, such as creation of marketing and recruiting tools, can be a value to a firm. This not only keeps everything in house, but provides better continuity for the varied projects ongoing in these types of departments."

### Prepare for Disaster

As with any trial, problems can occur. However, when a trial is heavily reliant on technology, two potential problems, if not addressed, could prove disastrous — a hard drive failure or an old-fashioned judge who refuses to allow technology in court. Attorneys and IT managers alike recommend firms first obtain permission from the trial judge to use trial technology in his or her courtroom before even creating the presentation. Second, they recommend creating a redundant system and bringing two fully loaded laptops to the courtroom.

Reichenbach said he remembers a situation where the judge ordered the technology out of his courtroom after clear overuse by an inexperienced partner. It's crucial that parties to the litigation discuss trial technology use with each other and with the judge ahead of time, he said.

Gerstman agreed. "Go to the trial site, read the judge's rules and make sure the courtroom is equipped for your technology," he said. "Someone from your firm should do this at least three weeks prior to trial."

Generally judges in large cities, such as New York and Los Angeles, or in cities such as Santa Barbara, Calif., where a "courtroom of the future" has been created, appreciate the use of technology, but Curtis cautioned attorneys always to check with the judge. Many judges allow technology, but might require the attorney to turn over some or all of the presentation to the other side so they can review it for objectionable material.

"During a recent trial in Kingman, Ariz., I received a conference order from the judge to go over trial technology," Curtis said. "During the conference the judge asked if attorneys for both sides could effect some type of sharing."

To prevent a technology meltdown, Curtis said he recommends, at a bare minimum, lawyers bring an extra laptop and an extra copy of the program created to the courtroom, then check all systems before leaving the office.

Gerstman agreed and said, "Hard drives crash and electronics fail, so bring all the documents with you and have backup CDs available."

Hall's firm goes to trial prepared for the unexpected. "Unfortunately, we continue to live in a bifurcated world," he said. "We always go to court with a complete extra set of all exhibits, which can be used if technology fails."

### Judge the Jury

Before investing time and resources into creating a technology presentation, attorneys must come to understand the

makeup of the jury they will be addressing and how receptive it will be to a technological presentation.

"Sometimes the lawyer must keep it simple and downplay the technology he or she is using," Gerstman said. "You don't want to look like the big, bad corporate lawyer to the jury, especially if the plaintiff's lawyer has no trial technology."

Curtis agreed and said if a lawyer is worried about the jurors' perception of the use of technology at trial, he or she might opt not to use it. However, he said, recently his firm used extensive trial technology in three cases in which the other side used none and the results were favorable in all three.

"I have had jurors come up to me and tell me they liked the technological presentation because it was easier to follow," said Curtis. "Studies say jurors retain information five times better when they both hear and see it. Most of our jurors today are coming out of a television age."

Reichenbach said he finds juries to be younger and more tech savvy than in years past, but said studies have shown the average attention span of most people is 22 minutes, so his team tries to use trial technology sparingly and effectively to prevent the jury or judge from tuning out.

### **The Trial Team**

Once preparation for trial is completed, and the trial technology presentation is ready to go, it's important to consider the professional who will be operating the equipment in the courtroom. This person must be very adept and have a good sense of timing. Preparation is the key and can be done quickly if necessary, but attorneys should take an IT person to the trial to run the technology itself, according to Gerstman.

"Have someone else run the technology," he said. "An experienced IT person will work well with the attorney and have the document up and ready to go when the attorney begins to speak about it."

Reichenbach's firm often hires a consultant or trial operator skilled with both the software and equipment and experienced enough to know when to leave the courtroom so opposing counsel doesn't try to piggyback on his firm's technology by asking the trial director to bring up exhibits and documents on their behalf.

"Demonstrative technology, such as 3D Studio Max and Soft Image, have been around for a while and are very good, technically rich and require a higher level of understanding to use," Reichenbach said.

Smaller firms might need less help during the actual trial, as long as the presentation is created and ready to go. When preparing for trial, Curtis said it takes a few weeks to scan documents into Summation and code them. Then this information is attached to a database, and Curtis collaborates with his MIS over the course of three days to prepare the PowerPoint presentation for the opening argument. Curtis said the firm brings its paralegal to court, and then enlists the help of its MIS between appearances.

"We hired an MIS guy and sent him to classes to learn PowerPoint and Summation software," Curtis said. "I leave for court with presentations for both the opening and evidence to be used during trial, then he joins us the night before closing arguments and we create a closing software presentation overnight."

### **Future of Tech**

Even as in-house legal technology teams are becoming increasingly clever in their creation and execution of trial

technology packages, software innovation is moving forward at a furious pace.

Gerstman's firm currently is working on a Virtual Private Network, which it will roll out next year. VPN will allow lawyers to work from a hotel room as if they were working in their own office with no delays. The addition of wireless access will allow the team to prepare for trial without actually having to be in the "war room" all the time.

"With VPN our attorneys will feel like they are sitting at their own desks no matter where they might be," Gerstman said. "And wireless access will allow them to actually work on documents in their war room without being there."

Using Web technology for legal research, case-related document repositories and real-time depositions will be pop-

## **The professional operating the equipment in the courtroom must have a good sense of timing.**

ular in the future, Hall said. He said he has heard discussions suggesting Web technology eventually will be used by courts to allow jurors to be at home "attending" each court session online, and then being "sequestered" in an electronic version of the jury room for deliberations.


Gerstman said he expects courts will provide the ability to track a case, view the court calendar and review decisions on the Web in the not-to-distant future. At the same time, costs of trial equipment and software will continue to decrease as they become increasingly popular, he predicted.

"Technology is becoming more and more important in how a lawyer manages cases," Gerstman said. "More often than not, cases have multiple plaintiffs, timelines in which to prepare for trial are shorter and courthouse dockets are crowded."

Almost everyone will have enhanced in-house capabilities, or at a minimum, standard applications such as PowerPoint, LiveNote and E-Binder, which continue to bring high value and ease of use, according to Reichenbach. Aftermarket PowerPoint templates with hip, cutting-edge graphics also are available, he said, recommending stock art houses such as Juniperimages from Junipermedia Corp. at [www.juniperimages.com](http://www.juniperimages.com).

"If you are doing the presentation in house, you want it to look good, not like everyone else's," he said. "I always keep my eye open for things that are interesting and that could convey a point the attorney is trying to make."

Citing an increasingly young culture raised on television, Curtis said he believes any law firm not using trial technology in the near future will lose its edge in the courtroom. Trial tools, he said, are more effective when the jurors see and listen at the same time.

However, Reichenbach cautioned, demonstrative evidence, like trial technology presentations, only supports the case, which ultimately must be strong from the beginning. 

### **ABOUT THE AUTHOR**

JANET ROBERTS is a freelance writer and owner of Roberts Research & Writing Service, as well as Legal Division Head at Erie Business Center in Erie, Pa. She provides writing and research services for lawyers, nonprofits, small businesses, political candidates, newspapers and trade magazines, and teaches writing, communications and legal courses at EBC. She holds a bachelor's degree in journalism from Temple University and an A.D. in Paralegal Studies from Southern Junior College. Roberts is working on her master's degree in Communications at Edinboro University of Pennsylvania.