

TECHNOLOGY ON TRIAL

Judges, attorneys have mixed views on IT in the courtroom

By **BRITTANY BERNSTEIN**

Though today's world is largely technology driven, this is not always the case in one place that could really benefit from the efficiency that technology could bring: the courtroom.

During a recent Nassau County Bar Association event, "Hot Topics in Litigation," a panel of four judges shared their views on varying topics, including the use of technology in the law field.

The judges had opposing views on the use of technology and demonstratives during oral arguments, as well as the use of hyperlinking in briefs, according to the two attorneys – Ellen Tobin, an associate at Westerman Ball Ederer Miller Zucker & Sharfstein in Uniondale, and Michael Cardello III, a partner at Garden City-based Moritt Hock & Hamroff – who co-moderated the panel.

Hyperlinking, which allows judges to click on case citations in legal briefs that will bring them to the actual case decision, was a contentious topic.

"It's expensive [and] in order for it to be effective, it requires the judge to read it on the computer," Tobin said. "Some judges love to use the internet; some judges think it's totally not worth the time and the effort."

Technology in the courtroom can include PowerPoint presentations, laptops, iPads with the TrialPad app to organize and present evidence, and plasma screens, and can be used for a whole host of things, like annotating documents, showing pieces of evidence, creating simulations or writing a real-time courtroom transcript.

The question remains: Is the implementation of these technologies worth the time and expense?

"The judges were really split," Tobin said. "When done right, it can be really helpful and great, especially PowerPoints during closing. Some judges thought it was distracting, saying demonstratives are not needed. It largely depended on the personal viewpoint of the judges."

Thomas McNamara, a partner at East Meadow-based Certilman Balin Adler & Hyman, finds that video depositions can be useful in presenting pre-trial testimony at trial.

"When the witness is answering at a deposition, the jury doesn't know how long it took them to answer the question, whether the person was looking uncomfortable with the question, whether he or she was looking at their attorney for guidance," McNamara said. "All of that is lost on paper, but in an appropriate case where you think a witness is not very credible you may want to film," to allow the jury to see for themselves.

David Richman, a partner who heads the complex tort and product liability and medical malpractice defense practice groups at Uniondale-based Rivkin Radler, finds technology especially helpful in his

field to explain the science involved in his cases to juries more simply.

"If you think about it, Twitter has trained us to look to get information in a very, very quick, short, concise manner," Richman said. "Those lessons are definitely important to take into the courtroom."

He stressed that technology should be used to deliver an argument as efficiently as possible, in a way that supplements the argument being made.

"You don't want to look like you're beating somebody up with technology," he said. "[It] needs to be within the context of the presentation," or a lawyer risks intimidating the jury.

Richman is starting a medical malpractice case involving radiology soon. In the past, the films would be copied onto boards. In this case, however, a litigation support company took the X-ray that Richman's client had taken and superimposed it over an animated image of the person's anatomy to aid the expert in explaining what was done and why everything that was done was appropriate.

Richman warned that there are special considerations involved in using technology, particularly the practicalities of courtroom set-ups, as many courtrooms are still not wired for technology due to a lack of funding.

Litigation support companies can be effective in this area, to help lawyers optimize their use of technology and to have someone go to the courtroom ahead of time to check how the room is set up for technology and what is needed.

Working with a litigation support company comes at a cost – anywhere from \$5,000 to \$100,000, according to Richman.

The steep expense makes it imperative that any models, accident reconstructions or animations that are created be completely accurate.

"If it's not accurate, there's a very good chance you're going to have spent \$10,000 to \$15,000 and the other side will object because it doesn't accurately depict [the situation] and you won't be able to use it," Richman said. "You have to be mindful of not wasting time and money."

Richman said in some respects it can be quicker, easier and cheaper to use posters, especially if a courtroom is not already wired with technology. It can be expensive and silly to rent multiple plasma screens to demonstrate a one-page document, he added.

Another problem with using technology is that it requires rehearsal, and even then, things can quickly go south during a trial.

"A jury might give you five seconds to [fix a problem], but after that you better have your act together," Richman said. "If you feel that's not going to work for you, don't do it. You'll lose the jury."

James Wicks, a commercial litigation partner at



DAVID RICHMAN: If you're using technology in the courtroom, make sure it works. You can lose a jury if technical difficulties drag on.

Uniondale-based Farrell Fritz, has used technology to view exhibits electronically, to create graphics, animations and timelines, for video depositions and to annotate documents.

Wicks has sometimes split the cost of having a technician at trial with the opposing side. He noted, however, that if he wanted to create a timeline or other demonstrative, that it would be at his cost, adding that the use of these technologies can get expensive and therefore always requires a cost-benefit analysis.

"For example, I had a case years ago where we had hundreds and hundreds and hundreds of pages of time sheets. We were able to create a summary timeline graphic where we could click on a particular date and pull up that time sheet. It was very effective," Wicks said, noting that in smaller cases, the use of technology may not prove as beneficial.

Wicks believes the days where there was a perception that the use of technology might make a judge or jury believe that one side had more money than the other are gone, at least in business law, because competition among litigation support services has driven prices down.

"I can tell you in business cases, which is what I litigate, that there's an expectation, I think, that you'll be using some technology," Wicks said. "The judges that preside expect it and appreciate it and so do the jurors."

Wicks added that in business, a lawyer may be perceived as doing his client a disservice if he doesn't use technology.