

# Splashy VERDICTS



How some firms jumped into the technology pond with trial presentation software.

By Elizabeth Millard



**A**s technology becomes ubiquitous in everyday life, digital tools and applications have reached the hands of attorneys as well. Lawyers, paralegals and legal assistants have begun using software to organize documents, collect necessary information and digitize law libraries for easier access. Digital document cameras, Personal Digital Assistants, digital projectors and laptops have made it a snap to streamline once-tedious legal processes.

Despite advances in law offices, however, technology has not exactly swept through the courtroom yet. There still are plenty of documents being blown up at Kinko's and mounted on easels, and wireless access is far from standard. It's far more common to see opposing counsel carting dozens of boxes into court than it is to see them connecting external monitors to their laptops so they can present computerized evidence to a jury. But the tide might be turning, especially as more attorneys take notice of the kind of successes enjoyed by those swimming in the technology pond.

At some firms, technology plays such a large role in trial preparation and presentation, lawyers credit their wins to it, as if technology was another member of the team who proved especially savvy. Here are a few tales of how technology helped some firms receive splashy verdicts.

## TECHNOLOGY SMACK DOWN

The Kansas City-based firm of Bryan Cave isn't afraid of putting its faith in technology. Actually, the firm prefers to put both feet in the water and use software and equipment from initial preparation to the end of the trial. It was no surprise, then, when the firm put all its tech savvy to use in a case involving World Wrestling Entertainment.

Bryan Cave represented WWE in a case against the manufacturer of a shackle that released prematurely and allegedly caused the death of wrestler Owen Hart. The Lewmar triggerlatch shackle connecting his stunt harness to a descent rope released as Hart was being lowered from a catwalk into the ring.

The lead attorney on the case, partner Craig O'Dear, noted it was imperative to educate the jury on the sequence of events and to explain product engineering in detail. To complicate matters, several overseas witnesses could not be present to testify in the courtroom.

"I believe that what jurors want to do is to give each side a fair trial, and they are working hard to understand your case," O'Dear said. "So, using technology can help clarify what you are trying to explain. If you are on the jury and being shown a letter from across the

room, and it's not being explained properly, you are going to be frustrated."

To help jurors understand the nuances of the case, O'Dear's team used Microsoft PowerPoint extensively to display timelines showing the sequence of events. The timelines were created by in-house graphics personnel who worked in conjunction with the trial team. A shorter overview in PowerPoint also was created so O'Dear could show

manipulating media storage files, so timelines can be organized quickly. When the whole shebang is ready for court, TrialDirector synthesizes the information created in the program's other areas.

O'Dear's team made extensive use of the software to compare documents, magnify portions of the documents and prepare video clips so the jury could see the testimony of witnesses who could

## THE TEAM MADE EXTENSIVE USE OF SOFTWARE TO PREPARE VIDEO CLIPS AND COMPARE DOCUMENTS.

general points and larger issues during his opening statement.

During the trial, the team projected key documents and photographs using inData's TrialDirector Suite trial presentation software. The application has four main components: TrialDirector, DocumentDirector, DepositionDirector and TimeCoder. The document and deposition areas allow firms to organize electronic case exhibits, from scanned images to deposition testimony clips. They also can incorporate elements such as PowerPoint files or Portable Document Format files created in Adobe Acrobat. TimeCoder is a tool for

not physically appear before the court. Because so many witnesses were not available, the WWE case ended up with quite a bit of video testimony, which presented a challenge in terms of data storage. To have all 90GB of video on hand and at the ready, the firm connected an external FireWire storage drive to a laptop.

To explain engineering details to the jury, the firm used a digital document camera with an Elmo presenter. Usually, a video camera is mounted on an Elmo stand and used to show photos, transparencies, illustrations and the like. With a digital camera in the mix,



O'Dear's team had more flexibility. His team could super-magnify images and still rely on a crisp picture.

After three weeks of testimony, the case was settled and Lewmar agreed to pay \$9 million. A poll of the jurors found they were overwhelmingly enthusiastic about Bryan Cave's use of technology because it helped them understand the evidence and gave them a better sense of witness testimony.

O'Dear noted the technology was not exactly cheap, but also said he is continually surprised more law firms don't make the investment.

"The cost of doing it electronically isn't a material item when you consider what is at stake," he said. "Plus, the computer capability you need is not remarkable. Just some good-quality scans done on a computer is the minimum. You have to rent jury monitors and have someone come in and cable everything, but in the context of, say, a \$5 million case, it's money very well spent."

He added that in the WWE case, as well as in other cases he has presented in a similar fashion, he offered technology advice to the opposing counsel and usually was rebuffed. Given how often he has heard jurors remark that it was the technology that helped motivate a decision for his side, he said he finds other firms' failure to adopt technology amazing, but not particularly surprising.

"I have rarely run into any opposing litigation team that was competent in the use of computers in the courtroom," O'Dear said. "I know lawyers are slow to innovate, but this is an area where lawyers who jump in and innovate can gain a competitive edge."

## ONE-SIDED TECHNOLOGY

Although PowerPoint and other trial preparation software have been around for a number of years, many tech-savvy attorneys report experiences similar to O'Dear's. Often, there is a plethora of technology on one side of the courtroom and practically nothing that needs to be plugged in on the other side. In fact, during one case, the judge approached O'Dear's team during a lunch break. He was so impressed with the way O'Dear was presenting the case, he asked O'Dear to demonstrate the technology to some fellow federal judges and a few local lawyers. "He was absolutely sold. He told us that this was the way to try cases from now on," O'Dear said.

Technology can be especially important if a case involves difficult-to-explain technical details. Jacksonville, Florida-based Spohrer Wilner Maxwell & Matthews found this to be true during an Army helicopter crash case that went to trial in 2000. Recently, the firm won a \$22 million verdict for the U.S. Army pilot and passengers of the Sikorsky Blackhawk helicopter that crashed.

Linda Whipple, the firm's paralegal on the case, said she used PowerPoint, as well as an LCD projector, two laptop computers and a sound system to assist the jury in understanding this very complicated case. The firm determined the helicopter had a hidden defect that affected its balance and flight, which led to its spinning out of control. The UH-60 Blackhawk helicopter, installed with two external outboard 230 gallon fuel tanks, experi-

right-side roll that caused the helicopter to crash and burn. Spohrer Wilner argued that Sikorsky knew of this design defect in the external fuel tank system, but failed to warn the Army.

The defendant didn't use any technology, Whipple said. The judge even reprimanded that team for failing to use a document camera. "They objected to us having all this technology because they said it gave us an unfair advantage," she noted. "But the judge didn't buy that argument."

Whipple added that her firm brought 10 boxes of documents to trial, four of which were the defense's exhibits, while the defense team had some 50 to 60. The sheer number of boxes carted into the courtroom had an effect on the jury, according to Whipple. "They looked intimidated, and we all knew it was a difficult case, so that didn't help," she said. "I think the jury appreciated the fact that we were not going to burden them with having to wade through boxes of documents."

When the trial was over, Whipple's team polled the jury and found the use of technology played a large part in their decision. Through numerous PowerPoint presentations, they were able to understand the aerodynamics of a helicopter and the cause of the crash. Technology gave them a better way to interpret the information expert witnesses presented when describing the failure. Jurors also praised the use of a large screen for viewing digitally presented documents. Whenever an exhibit number was mentioned, the Spohrer Wilner team could flip to it quickly and show it on screen. Because documents appeared so quickly, the jurors became familiar with key pieces of evidence. "Seeing the documents over and over

## JURORS ENJOYED THE USE OF A LARGE SCREEN FOR VIEWING DIGITALLY PRESENTED DOCUMENTS AND KEY PIECES OF EVIDENCE.

enced a fuel flow interruption in the right outboard tank. Unaware of the fuel draining only from the left tank, the crew attempted an approach to hover to set up for landing. The pilot noted the aircraft was right-side heavy and continued an uncommanded

made them understand the case," Whipple said.

Since that case, the firm expanded its use of technology to an even greater degree. Now Whipple said she is a fan of Sanction II software, a legal trial presentation application by Verdict Systems, as well as other software such as Summation and Dataflight Software's





Concordance. The programs allow an attorney to prepare documents for trial, share information between computers, search multiple databases simultaneously, and review depositions and transcripts online, among other features.

During a medical malpractice suit brought by Spohrer Wilner, Whipple said she noticed whenever her firm presented evidence, jurors reached for their notebooks. After two weeks, the jury came back with a verdict of \$4.9 million for the firm. The other side used some digital documents that Spohrer Wilner provided, but one of the three defendants relied primarily on blown-up documents mounted on boards. When Whipple saw how many boards that one defendant actually brought in — more than 450 of them — she said she felt sorry for the other firm's paralegal. "We had some of the witnesses say they felt sorry for her," Whipple said. "That is not a position you want to be in when trying a case."

Jurors might not need to feel sympathy for the paralegal in the future; after the case was over, Whipple received a call from her, asking where she could buy the software.

"Opposing counsel members sometimes say, 'Your firm scares us because we don't know what you have,'" Whipple said. "That is because they don't see how many boards we have. We only have a laptop and a screen. That is the beauty of trial preparation software like Sanction II."

## OUT OF COURT

Although technology can be a powerful tool in the courtroom, sometimes it can work to keep a case from going before a jury at all. Recently, Salt Lake City-based Jones Waldo Holbrook & McDonough had a case dismissed, and firm Information Technology director David Clark credited technology to a certain degree for the outcome.

He noted that the firm used Summation for drawings and photos relating to the case, as well as to scan images and organize information. Because opposing counsel didn't have that kind of firepower, the technology made a strong impression on the judge, who determined the case should be dismissed. "The judge determined this based on facts, of course, but it was a lot easier for him to understand with the way we presented it," Clark said.

## MORE AND MORE JUDGES WILL FEEL INCLINED TO ASK FOR PRETRIAL PRESENTATIONS CREATED WITH DIGITAL TOOLS.

Clark said he thinks more judges, even those who have not embraced technology so far, will begin to feel more inclined to ask for pretrial presentations created with digital tools. "Judges are always interested in something that makes the trial easier," he said. "Even if they don't know about technology, they know when trial time is decreased because of it, or jurors are better informed through the use of it."

Attorneys currently relying on boards, easels and little else also will have to join the technology revolution, Clark noted. "More firms will start using technology when they see the impact it has in the courtroom."

Kim Balk, IT director at Des Moines, Iowa-based Belin Lamson McCormick Zumbach Flynn, agreed technology use at every step in a case definitely looks like the future in trials. She said her firm has trained paralegals to use TrialDirector, PowerPoint and CaseMap, a CaseSoft application that is designed to organize details of a case.

Balk said judges are becoming more comfortable with seeing technology in the courtroom, and tech-savvy firms are leaping toward doing more with depositions presented in digital video (see "Digital Video" on Page 76). At her firm, Balk said she has been exploring how to make video depositions more interesting with Adobe Photoshop, Adobe Premiere Pro video production software and audio software that makes witness testimony sound as good as it looks. "Technology is really moving fast," she said. "We have to make sure to stay ahead of it."

## SIMPLICITY

Not all successful cases using technology are complex or require an array of technology. In a 2001 trial brought by Swanson Gardner, a three-person firm in Renton, Wash., trial presentation software was used in a simple, yet compelling way.

According to a report submitted by Todd Garner, a partner at the firm and

the plaintiff's attorney, the case involved a woman hit by a commercial van while exiting the parking lot of a Seattle Costco. The van's driver, Costco and the company that owned the van settled prior to trial. The only remaining defendant was the City of Seattle, which the firm said failed to correct a known and dangerous condition in that area. The city rejected the claim, and the case went to trial.

To prove the city knew about the danger of the intersection, the firm's paralegal found prior complaints about the intersection and evaluations performed by Seattle officials. The firm decided presenting the evidence in the traditional way would be mundane. It was a straightforward trial, and the documents could fit in one box, but Swanson Gardner still decided to use technology to create more interesting exhibits that would keep the jury's attention.

The firm hired ProVideo, a company specializing in litigation support video services and trial presentation strategy. For document preparation, the company suggested Swanson Gardner train its paralegal on TrialDirector Suite. At trial, scanned images of trial exhibits were presented on a 6-foot screen using an Elmo projector. The jury returned a verdict of \$13.2 million for the plaintiff.

Using technology sparingly, as Swanson Gardner did, can be very compelling and cost effective for firms of any size, said O'Dear. He noted that too much technology in the courtroom can be distracting, but if it's used appropriately, and with the aim of making information understandable, it's tough to beat.

"You still have to have the evidence," he said. "Technology can't make a bad fact into a good fact. But it can amplify the evidence to the jury, and that is important because we are hired to succeed in the battle of persuasion. These tools can help attorneys do that because they give you leverage. In the battle of persuasion, these tools are the weapons." ■

### ABOUT THE AUTHOR

ELIZABETH MILLARD is a freelance writer based in Minneapolis.