



JAVS PERSPECTIVES SERIES:
EFFECTIVE USE OF DIGITAL RECORDING
TECHNOLOGY IN THE LEGAL SYSTEM

HOW TRIAL LAWYERS BENEFIT FROM DIGITAL TECHNOLOGY IN THE INTEGRATED DIGITAL COURTROOM

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Look, now, at our young. Most are technologically proficient. Many get much information from the internet. They consult and refer to it... Even if they have the ability to endure hours and days of sitting listening, how long would it be before some ask for the information on which they have to make their decision to be provided in forms which adapt to modern technology?

-Sir Igor Judge, President of the Queen's Bench Division, as reported in "Criminal Jury Trials in 2030: A Law Odyssey," by Jacqueline Horan and Shelley Maine



EXPECTATION OF TECHNOLOGY

From the millennial generation to judges, everyone expects a competent level of technology in the courtroom.² In fact, professionals such as Sean Oates, owner of Trial Visuals, are often consulted “to do creative things like how to teach the jury visually.”³ As Oates explains, “People in general and millennials in particular—you can’t expect them to learn just by telling them something.”

With the presence of sufficient technology in an integrated courtroom, attorneys can smoothly and easily play clips of witness testimony in closing arguments, showcase images of evidence and scientific tests, and broadcast recordings of police bodycams and police radio. A courtroom that can provide the integrated technology for this also has the capabilities to capture the clips directly for the court record, ensuring that they are available on appellate review.

Technology integration means using technology that all works together to make it possible for everyone to see and hear what is happening in a courtroom according to the needs of the court while preserving the AV feed for the court record.

As noted by Judge Thomas W. Brothers with the Sixth Circuit Court in Nashville, Tennessee,

“Whether the record is created by steno machine, voice mask, or shorthand, the proceedings are all filtered through the person who is the reporter; the record is essentially nothing more than reliable hearsay. Videotape on the other hand, is an exact recording of what occurred.”⁴



Unfortunately, many courtrooms have not yet become a source of integrated technology, and this severely constrains the ability of trial lawyers to present an effective case. Adrian Madrone, criminal defense attorney in Washington State, shared that in superior court, the local attorneys literally hold up their laptops to show images to the jury when trying to make a point visually. He says that a few lucky courtrooms have a projector and the image can be shown on a wall. Most of the time, though, “Either I have to bring all the technology or coordinate with the prosecutor.”⁵

Madrone points out that the technology available in many courtrooms is so piecemeal that he has to stand right next to the “pause” button to ensure that the laptop does not play past the point of admissible evidence. As he explains, “Even the most basic technology needs are challenging.”

NECESSARY TECHNOLOGY

Given the ubiquitous nature of smartphones—the prediction is that 248.68 million people in United States will have smartphones in 2019⁶—many people are comfortable taking photos, recording interactions, and accessing digital images. In addition, these devices often create audio/video evidence that can make or break a case, evidence that jurors expect to see when an attorney presents the case. It is also evidence that appellate courts need to see on appeal just the way it was presented in court.

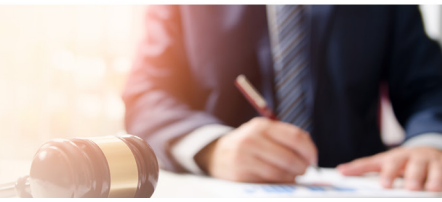
Integrated technology can make this possible, with pre-positioned microphones and cameras that can capture all views of the courtroom and store it as complete digital court record. In addition, integrated



technology can provide a kiosk that allows different kinds of AV technology to feed directly into an integrated courtroom's digital record as the AV is shown to the jury. This can include images off a laptop, PowerPoint files, custom animations, police dashcam/bodycam, and even feeds from a social media account. Typically, the kiosk will provide an array of input connections for various devices such as HDMI, DVI, VGA, and more. The kiosk usually contains a high-resolution document camera as well as a DVD and Blu-ray player. Whatever the attorney puts on the screen from any of these sources will automatically become part of the video court record when connected to a digital recording device.

Social media access by the attorneys to display evidence in court is becoming increasingly more important during trials. For example, Sean Oates was hired last year to testify as an expert on Snapchat during trial, and he provided a slide presentation on it to the court. Situations like this are completely dependent on the use of integrated courtroom technology to display results to everyone in attendance. With 214 million Facebook users in the United States alone (and 1.8 billion monthly active users worldwide),⁷ the use of social media as evidence in trials will only increase.

Fast turnaround times to access the official court record is also a benefit to integrated courtroom technology. According to attorney Madrone, one of the advantages to having a video court record is much quicker access to a copy of the video rather than waiting a month for the transcript from the court reporter. Of course, the methods are not mutually exclusive—one could transcribe a high-quality audio or audio/video record.



A courtroom appropriately equipped with technology means that a lawyer can focus on the right thing—the trial itself. Sean Oates noted the possible uses of an audio/video record that he has seen, from a two-hour opening statement filled with quotes from prior interviews, to showing the defendant in the driver’s seat from a police car dashcam in a DUI trial, to stringing together a witness’s many replies of “I don’t remember” in the closing argument to undercut a key witness.

Indeed, the absence of visual information can hurt a side’s case. Law professors Jacqueline Horan and Shelley Maine noted that **“people retain between 10-15 percent of information presented orally and 65-97 percent of information presented visually.”**⁸

Horan and Maine interviewed a jury following a 2012 murder trial in Australia. Five of the twelve jurors said they were “dissatisfied with the lack of visual aids,” and two jurors expressed the desire for “a video showing how the murder weapon worked.”⁹ The DNA expert also “complained about the absence of visual aids in this trial,” preferring to start with a PowerPoint slideshow of basic information if possible.¹⁰ Finally, the forensics expert wished the photographs had been magnified on a large screen, and that they could have used a laser pointer “to pinpoint specific parts.” In fact, with digital AV technology today, presenters can mark up a screen with annotations and the marks will be preserved in the digital court record.

The law professors found that the “persuasive power of counsel’s closing argument was enhanced by the effective use of the forensic audiovisual simulations.” While the simulations required time to prepare, the time saved through showing the simulations rather than just using



verbal testimony meant the trial “took two weeks rather than almost two months.” In addition, “the evidence was fresher in the minds of the jury at the time that they deliberated.”¹¹

In this day and age, where digital technology is literally at our fingertips in everyday life, we need to integrate it into all of our courtrooms. As Horan and Maine concluded:

“Through adopting technology-based discourse, communication will be more effective and trials will become more time- and cost-efficient, but the government must first invest in the infrastructure to enable this to happen.”

ABOUT JUSTICE AV SOLUTIONS (JAVS)

Justice AV Solutions (JAVS) is the global leader in digital courtroom recording solutions integrated in over 10,000 courtrooms throughout the United States and across four continents. Clients across the world have trusted the JAVS solution to accurately capture, store, and publish the official verbatim record of the court for over 30 years. From public address to remote arraignment to open source access, JAVS promotes truth and accuracy by preserving the record for tomorrow’s justice system.

NEXT STEP

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1. Author Julie A. Helling is a graduate of the University of Michigan Law School. She served as a prosecutor before becoming a college professor.
2. For more information on Millennials in the Courtroom, see the white paper provided by Justice AV Solutions (2017).
3. Author interview with Sean Oates by phone on 2-21-2018.
4. Keith A. Gorgos, "Lost in Transcription: Why the Video Record is Actually Verbatim," 57 Buff. L. Rev. 1057 (2009).
5. Author interview with Adrian Madrone on 3-23-2018.
6. From Statista, "Number of Smartphone Users in the United States from 2010 to 2022," accessed on 6-12-2018 at <https://www.statista.com/statistics/201182/forecast-of-smartphone-users-in-the-us/>
7. From Statista, "Facebook Users by Age in the U.S. 2018," accessed on 5-20-2018 at <https://www.statista.com/statistics/398136/us-facebook-user-age-groups/>
8. Jaqueline Horan and Shelley Maine, "Criminal Jury Trials in 2030: A Law Odyssey," 41 Journal of Law and Society 551 (2014).
9. Criminal Jury Trials, p. 565.
10. Criminal Jury Trials, p. 566.
11. Criminal Jury Trials, p. 571.
12. Criminal Jury Trials, p. 574.