

Courtroom Technology: Where is the Ethical Line?

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“**C**SI: *Crime Scene Investigation* debuted on television in the fall of 2000 and introduced viewers to various forensic tools and technologies employed in our judicial system. The Hollywood spin on otherwise sound forensics, however, enabled the show’s investigators to find, collect, analyze, interpret, and make sound forensic determinations before the credits were rolling at the end of the hour-long show. Since the show’s introduction, litigators across the country have encountered a new and sometimes unreasonable expectation — factfinders — particularly juries, expect to be presented with at least some evidence that resembles what they have seen on *CSI*. Countless articles have been written and a descriptive phrase was coined — “the CSI effect” — to describe the impact that this program, and others, has had to heighten expectations of factfinders, judge and jury, in the American justice system. In response to this phenomenon, whether real or perceived, advocates employ advanced technological tools to present evidence with the goal of best persuading factfinders. As Delaware lawyers, we must grapple with when and how to use available technology as it is clear that our audiences (juries) expect some level of visual “infotainment.” While “making the record” with the freshest tools and technology available, we must simultaneously be mindful of the rules of evidence and our role as Officers of the Court.

Ethical Considerations

A lawyer’s facility with technology in the 21st century may be viewed as a basic competency requirement. General competence is required of Delaware lawyers, and “[c]ompetent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”¹ “Competent handling of a particular matter includes . . . use of methods and procedures meeting the standards of competent practitioners.”² Moreover, lawyers are expected to maintain competence by keeping “abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology.”³ Thus, it is incumbent upon Delaware attorneys to become familiar with technological tools, understand the benefits and risks of using this technology in the courtroom setting, and reach an educated conclusion to use, or not use, such tools in a given case.

Delaware lawyers are also expected to “make reasonable efforts to expedite litigation consistent with the interests of the

client.”⁴ This rule addresses the impact of dilatory practices on the administration of justice and cautions against unnecessary delay and postponement.⁵ Employing existing trial technology will enable a practitioner to substantially reduce unnecessary delay and, in the process, more effectively convey a client’s position to the factfinder. The Federal Judicial Center publication, *Effective Use of Courtroom Technology: A Judge’s Guide to Pretrial & Trial*, noted that several lawyers and judges reported “that use of the most common evidence-display equipment can save trial time (some estimate 30% or more) compared to traditional methods, primarily because all exhibits are maintained electronically and can be called up instantaneously, and real-time reporting decreases the amount of time spent referring back in the record.”⁶

The use of trial technology allows advocates to creatively present and argue their cases to a factfinder. While this can be quite useful, the attorney must be mindful of his obligation of “candor to the tribunal.”⁷ Rule 3.3 “sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process.”⁸ A lawyer’s “obligation to present the client’s case with persuasive force” must, necessarily, be balanced by his “duty of candor” to the tribunal.

Courtroom technology, especially software such as PowerPoint or Keynote used in argument, allows a lawyer to create compelling presentations based upon evidence expected to be admitted (opening statement) or which has been admitted at trial (closing argument). Logical inferences may be drawn from the evidence presented; however, great care must be taken to ensure that the creative process does not overemphasize, mislead, or misstate trial evidence.⁹ It is important not to cross the ethical line. 

4. DLRPC 3.2.

5. DLRPC 3.2, comment.

6. *Effective Use of Courtroom Technology: A Judge’s Guide to Pretrial & Trial*, at pp. xiv-xv.

7. DLRPC 3.2.

8. *Id.* at comment [2].

9. As a related example, while a prosecutor may argue that the facts presented support the conclusion that the defendant is guilty, the display of a defendant’s photo contemporaneously with the word “Guilty” is generally perceived as an expression of personal opinion and may lead to reversal. See, e.g., *In re Glasmann*, 286 P.3d 673 (Wash. 2012); *Watters v. State*, 313 P.3d 243 (Nev. 2013).

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1. *Id.*

2. DLRPC 1.1, comment [5].

3. DLRPC 1.1, comment [8].