

AV TECHNOLOGY AND CASE STRATEGY

Leveraging AV evidence requires expertise, tools for merging this technology with the current litigation process and service providers that can acquire, produce and manage the content.

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Part 2 of a 3-part series on how the pandemic changed the litigation process. Find part 1 [here](#).

The use of audiovisual technology is on the rise, including in litigation. With the increased adoption of remote depositions, video capture of testimony and associated exhibits, litigators can leverage AV evidence more efficiently in their cases. Today, we are all exposed to short-form AV content on YouTube, Instagram and other sources and are comfortable receiving and retaining information this way.

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Photo courtesy of the New York Unified Court System

Audiovisual Content

AV-based evidence in litigation can provide a material advantage in your case. The effect on litigation is game-changing, considering the visceral impact and memory retention rate of AV versus textual content. Visual aids can help make evidence understandable, impactful and memorable. And, according

to a recent study published in 2021, there is substantial evidence of audiovisual learning resulting in a higher memory recall than just visual alone, as multimodal learning is more effective for memory retention.

According to Janet Hoffman and Associates in “Visual Advocacy and the Effective Use of Demonstrative Evidence at

Trial,” it is shown that people learn more efficiently with all of their senses engaged. Therefore, the parties will be more receptive and retain more when presented with a multimedia format rather than a simple narrative.

Today, the most common AV content in litigation is video of witness testimony, whether as part of an examination or an expository artifact such as a “day in the life” video for the purpose of demonstrating the human impact in a case.

Increasingly, artifacts such as physical site inspections and aerial videography of a facility are being used. Emerging AV content will become even more prevalent over the next few years as tools such as 3D modeling and interactive virtual-reality tours become more common. Imagine the power of an argument that is based upon the participants virtually walking around a site or peering within the inner workings of a machine that was captured in evidence.

Creating Compelling Evidence Using AV

AV materials often have more of an emotional impact

than verbal testimony, but it is crucial to ensure a factual basis so that the emotional impact is proportional to the evidential impact.

In expanding the use of AV in cases, the successful litigator will need to wear the hat of a film producer. Don't sweat the technical aspects, as there are professionals who can handle that, but focus on your *story*, which supports your case arguments.

When developing your case strategy, it is best to factor in AV content prior to and throughout the discovery phase. You should consider what evidence may exist in any medium and what further evidence can be gathered. Work backward from what you believe the most compelling arguments would look like, storyboard the AV argument, then seek to fill in the AV blanks during the discovery phase.

Ensure that you are thinking about your storyboard in an integrated way. For example, a drone-flyover video of a facility [in a construction defect case] with picture-in-picture testimony of an expert witness calling out relevant and compelling facts being

presented visually could be a compelling and powerfully integrated presentation of evidence.

Finally, when presenting evidence to be used in the case, be prepared to speak to the source content and editing methods so the evidence is not thrown out by a judge on challenges as to the quality, completeness or editorial validity of the media.

According to David Notowitz at the National Center for Audio and Video Forensics, the attorney should understand what the evidence is, how it was edited and how to support it. If the attorney has misunderstood or missed a crucial part of the video, an adversary may use that to argue against the video evidence or, worse, use it to augment counterarguments. This is another area where a qualified, full service legal provider can assist you.

Find the Right Partner for Your Needs

While AV content requires skills, tools and resources that most law firms do not have at their disposal, qualified litigation support providers can efficiently use and manage AV

tools. Specifically, it is helpful to partner with an organization that can securely oversee capturing testimony or evidence as well as the production and content management of the evidence.

In addition, there may at times be a need for services to be set up and for a presentation of AV material in a court setting.

There are many local providers that can provide services across the United States and Canada as well. For years, witness annotation, screen capture, personal viewing monitors and the like have been provided by legal services firms, and you should count on those firms to extend their services as new interactive media is brought into play.

Not only must these technologies work well to support legal documentation and arguments, but they should also be managed in a way that meets the requirements of the courts in submitting evidence. When it comes to presenting evidence in the

courtroom, it is important to engage a provider that can bring to bear all the tools and services needed. Each venue has different requirements and facility restrictions, and you need to make sure you are prepared and ready to present your AV evidence.

Rarely do video, exhibits or the textual transcript stand alone as artifacts that drive a compelling argument. Consider the integration of those components in ways that you are familiar with, such as producing a video of witness testimony with a picture-in-picture view of their interaction with a documentary exhibit as a common example of such integration today. AV content can be produced to allow your adversary, or a jury, to virtually walk around a site or an object, with audio queues explaining the argument.

Service providers should be able to provide certifications and documentation on these policies. Ensuring that your service provider meets these standards will go a long way

in protecting against liability in the event of a potential cybersecurity breach.

Audiovisual technology will continue to be influential for years to come, not only in litigation but in many aspects of our lives. Legal arguments can only be more convincing when combined with well-formed multimodal evidence.

Tools will continue to evolve and become more efficient, as AV remains popular in evidence presentation. Due to its clear impact on memory and retention, as well as emotional impact, AV should be a prominent part of your case strategy.

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