David R. Barry, Jr. wanted to prove in a 2002 case that neurosurgeons and the hospital failed to properly treat his clients cerebral aneurysm.

His client may have looked completely healthy, but she experienced serious mental issues associated with the aneurism. She went from being an accomplished adult to possessing a mental state equivalent to a 10-year-old child, Barry said.

So Barry took the jury inside his clients brain. He used computerized animation portrayed in a video to demonstrate to the jury how the bleeding affected the areas of her brain that control cognition and complex thinking.

The video used illustrations to show the different parts of the brain, highlighting each part and showing what functions each part controlled. It then showed where the aneurism occurred, and how those parts of the brain were affected by the aneurism.

I think it was vital because the anatomy
involved was so complicated, said Barry, a partner at Corboy & Demetrio. In order for the jury to understand why the solution to the problem was relatively simple, they had to actually understand the anatomy.

Most trial lawyers who handle complex or intricate cases now use technology in the courtroom to convey information about their case to a judge or jury. They find the technology helps them turn complex information into easy-to-digest ideas.

Although the cost can be daunting, law firm lawyers and corporate counsel say the expense sometimes doesn’t matter if it means a successful outcome.

In the last five years, [using technology] has definitely become the rule rather than the exception, Barry said. It is expensive, but often, particularly in more serious injury cases, it is an investment that is well worth making.

**Reaching the jury**

Using technology in the court room is almost required today because society lives in a visual and technological age, said Paul Garry, a partner at Meckler Bulger & Tilson.

When Garry started practicing law he used to make paper copies of documents, but juries
don't want to deal with all that paper anymore.

As an employment law lawyer, he has used technology to present information during a trial. For example, during a case involving a sexual harassment claim, he and his trial team tried to show what happened by creating a timeline PowerPoint presentation. They could click on specific areas of the story, and provide more detail. It helped the jury follow the story more easily, he said.

If they had created a timeline on a poster board, the jury may have skipped ahead in the story, and stopped paying attention to the area they were addressing, he said.

Juries are kind of expecting you to present things in an electronic format, Garry said. What you try to do is get your message across in ways that are easy and understandable.

Chris Griesmeyer, a litigation partner at Levenfeld Pearlstein, said he has used technology during trials, but a recent two-week federal trial marked the first time he used technology throughout the entire trial to digitize documents and exhibits for all the witnesses.

Griesmeyer believed this technology would help the witnesses better describe the complex documents. With the help of an
outside vendor, the trial team figured out what to use.

The technology allowed them to pop up documents on a screen, while a consultant highlighted and enlarged the sections of the document being addressed.

It was absolutely wonderful. I will never do another trial without using this technology, Griesmeyer said. [The vendor] uploaded all our documents, and all our exhibits. And whenever we needed to refer to an exhibit, instead of fumbling through an exhibit book, it showed up on the screen.

It really made the documents come to life. Another benefit is, all eyes in the courtroom are literally on the same page. More lawyers are figuring out that if they use technology earlier in the process they stand a better chance of moving a case toward a settlement, said Mike Rogers, an adjunct professor at Chicago-Kent College of Law who teaches litigation technology.

Rogers teaches his students that if they understand how to use technology in the courtroom they will develop a competitive edge over those who cannot.

I think more and more schools are definitely teaching it, said Rogers, president of Ronin Consulting, which helps lawyers organize and
present their cases technologically. We are teaching them a methodology for what works in a courtroom, what is acceptable, and what is not. You are not just there to create death by PowerPoint and bore people.

David Bernick, a Kirkland & Ellis litigation partner, said he has been using some type of technology during his trials for the past 25 years. He experienced the progression from overhead transparencies and flip charts to computerized 3-D graphics and intricate animation.

In the 90's, lawyers would load thousands of documents into a computer so they could show each one on a screen, but that was a waste of money, he said. He likes having the freedom to talk to a jury without the burden of standing behind a podium and shuffling through a stack of papers.

Bernick often uses an ELMO legal presenter, which projects on a screen an enlarged image of an exhibit or document.

My advice is really that technology should be the tail, not the dog, he said. The basic rules of persuasion at trial and, likewise, the basic rules of being efficient in litigation are really the touchstones for everything.

In-house perspective
Michelle Browdy, a former Kirkland trial lawyer and now vice president and assistant general counsel for IBM, said she consistently seen the use of technology in the courtroom on big-ticket litigation - regardless of the size of the city.

Some companies specialize in courtroom technology, and some large firms have staffs in-house that help with the technology, Browdy said.

Technology can help make a message clearer, she said.

If they can't explain it in the courtroom in a way that the jury or judges understand it, all their money is wasted, Browdy said. That is not to say that you have to have the best and the fanciest systems.

Sarah Taylor, chief counsel, intellectual property at Robert Bosch LLC, said her company's patent infringement cases do not typically go to trial, but the company has used technology on those cases that make it into a courtroom.

The technology sometimes makes a trial more cost-effective because trial teams no longer need to make copies of every possible document, Taylor said.

When she was a patent litigator, they used
foam boards to present information, but those were expensive. Tools like PowerPoint and ELMO often save money.

[Technology] makes it easier to communicate with the jury, Taylor said. Everyone can see the document discussed by the witness on one screen. I think it focuses everyones attention upward as opposed to them looking down at the paper document, or not seeing the document at all.

Bell, Boyd & Lloyd invited corporate counsel to a recent forum called, Innovative Strategies for the Electronic Courtroom.

Irving Levinson, a Bell Boyd partner who spoke at the forum, said cases are often won or lost on big-picture themes. The electronic courtroom permits lawyers to refine and present large-case themes in a dramatic fashion.

Levinson said hes never failed to persuade a reluctant judge to allow technology in the courtroom because he or she is usually curious about how it will work.

Some cases may not benefit from technology, he said. If a case, for example, has less than 20 exhibits and is only a three-day trial - it might be unnecessary.

The advice that I would give to corporate
counsel is to wrap their arms around it and become the captain of their destiny by challenging their retained lawyers to become comfortable with the technology and be very hands-on, Levinson said.

It changes the practice of being a trial lawyer in that it allows you to be far more creative, and I find that immensely enjoyable.

Most people are predominantly visual learners, and the technology allows lawyers to grab the judge and jury’s attention and helps them retain information more effectively, said Daniel Wolfe, director of jury consulting at Kroll Ontrack/TrialGraphix, a trial consulting and services firm. He was also a member of the forums panel.

In the future there will be an even greater use of interactive technology, he said.

A few jurisdictions have experimented with virtual technology. Juries, for example, have worn virtual reality helmets so they could see, for example, a 3-D recreation of an accident, Wolfe said.

I think first and foremost the most important reason lawyers should consider using it is because jurors expect, if not demand, that this type of technology is used, because their normal, daily routines incorporate this type of technology, Wolfe said. Generation X and...
Generation Y were born and raised with this technology.

Weighing the cost

Technology in the courtroom often comes with a large price tag, said Joseph Reagen, assistant general counsel/intellectual property for Baxter Healthcare Corp.

Reagen said its not unusual to spend several hundred thousand dollars for the technology and a technology consultant. But he finds it worthwhile when it explains complex information in a simple, easy-to-understand way.

For example, a few years ago Baxters trial team and an outside consultant developed a 19-minute DVD that cost over $100,000 to produce. But in those 19 minutes it educated the judge on the patent in the case, and the key terms associated with it.

It turned out to be a justified expense that was very successful, he said. On the other hand, the other side had a 110-page PowerPoint that the judge lost patience with by the fifth slide, and they werent able to present it. We quickly accomplished our objective, and it helped us prevail in the hearing.

Reagen said the expenses often grow, even with a tightly controlled budget. But with
millions of dollars sometime at stake, it becomes difficult to balk at spending hundreds of thousands on a technical consultant whose expertise may positively impact the case.

I think, as a general rule, it is making litigation more expensive, he said. In the last few years the cost of taking a case through trial has grown significantly, and a lot of that is due to consultants—e-discovery consultants and technology consultants.

It adds a whole new layer. I don't see away to not use those resources.

Costs can be broken down into three components, said Wolfe, from Kroll Ontrack/TrialGraphix.

One of the largest components is often the cost of hardware, such as equipment rental and the use of items like projection systems, laptops, and screens.

[But], with more and more of the courtrooms becoming tech-ready the clients don't have to incur those costs, Wolfe said.

The second component is the cost of production, such as scanning, imaging documents, and creating presentation material.
And the third component is the professional time or the use of a consultant or team to help run the technology, he said. Garry, from Meckler Bulger & Tilson, said general counsel should ask their outside counsel for a trial game plan so they know what costs they are approving.

Then before authorizing it, make sure it makes sense, Garry said. Sometimes lawyers fall in love with their technology …

The trial team should ask themselves, he said, 'do I understand what I am trying to show?

Getting the graphics side of a case under control early on will help with mediation and summary judgment, and will keep the overall costs down, said Mike Abernathy, chair of Bell Boyds intellectual property department.

Where graphics tend to get completely out of control is when trial counsel says, 'Oops, we are going to trial now. I must figure out how to demonstrate this case, he said.

A good vendor will give a realistic quote and break down the expenses, said Griesmeyer, from Levenfeld Pearlstein. Clients may experience sticker shock when they learn the cost, but corporate clients usually understand that trials can be expensive.
When they actually show up at the trial, he said, and see what the money is going toward, they are converts.

**Pros and Cons**

Lawyers sometimes make the mistake of leaving the technology part of a case to the last minute and not practicing before they use it, said Rogers, from Chicago-Kent.

I think that if you use technology for technologys sake, you can look overly flashy, Rogers said. It can become distracting if you dont have a really good reason for using it.

Lawyers need to manage their expectations and not become so enamored by the technology that they lose sight of such limitations as the budget, said Wolfe, from Kroll Ontrack/ TrialGraphix.

Technology is simply another medium to persuade the jury. Lawyers cannot forget the importance of communicating their message. They need to learn how to use the technology effectively because a jury may translate technological incompetence as legal incompetence, Wolfe said.

Lawyers should also consider their venue, because some venues are not as accustomed to using technology. And consider how a judge
will react because some are big fans and others are not, he said.

Technology can be overused and people become desensitized to it, whether the judge or the jury, Wolfe said. It is not right for every case, and it's not right for every lawyer. And it is not that you have to use it in every case to be successful.

Levinson, from Bell Boyd, said many lawyers fear trying technology because they don't want to give over control of their case, and do not want to create unnecessary work. They also fear that the technology will not work, he said.

I secretly hope they continue to be afraid of it because it gives me an advantage, Levinson said. Truthfully, the technology is now so simplified.

A big divide exists between those lawyers who control their technology in the courtroom, and those who let a consultant or technician push the buttons, Levinson said.

Those lawyers who run the technology themselves often instill confidence in the jury and show that they are in control of their case, Levinson said.

By controlling the technology, a lawyer can control the pace of the trial.
Lawyers may use technology and assume that, because the jurors see it, it is in the record, said Abernathy, also from Bell Boyd. But that’s not always true.

For example, during a trial two years ago, his opponent made critical mistakes when he failed to put some of the information he shared via technology in the record. Abernathy said there was no oral testimony or written record reflecting that information.

In the post-trial briefing, they really got in a lot of trouble, he said. They didn’t have a record to support their assertions … You think that because the jurors are learning the information that the record is complete. It is an easy mistake to make.

That can be devastating and certainly even more devastating when you are on appeal and looking for evidence to support a position, he said.

Abernathy said he also sees some lawyers using technology too much, in lieu of strong witnesses and strong advocacy.

The witness sometimes gets diluted or drowned out because of too many exhibits and too much technology, he said.

I think people often get so into the technology that they lose sight at the end of the day of
what really counts - witness credibility, he said.

Using electronic demonstratives when cross-examining a witness can be challenging, said Bernick, from Kirkland, because the witness doesn't need to accept what was prepared.

Typically, on cross-examination, I would never use prepared graphics, Bernick said. I would prepare the graphic and think about how to draw it myself.

On cross-examination, I used to go through pad after pad of flip charts, he said. The jury sees your hand, and the pen becomes your punctuation.

Garry, from Meckler Bulger & Tilson, said lawyers must ask if the technology brings added value to the case.

He sometimes prepares the technology, and then narrows down the number of tools he will use as he gets closer to the trial.

He may vet the technology during mock juries, and in consultation with other lawyers in his firm.

General counsel must consider the courtroom technology, and be careful that it does not portray their company as too slick - especially in situations where it's a company against an
individual, Garry said.

We are past the point where people are debating, 'is this something we have to use?' he said. The issue is how to effectively use it.

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