



LJN'S

# LEGAL TECH

Newsletter®

## Special Report The 2006 ABA Tech Report

### Trends in Courtroom Technology: Has the Picture Changed?

#### Editor's Note

This month, *LJN's Legal Tech Newsletter* is proud to include a special supplement highlighting and analyzing the Litigation and Courtroom Technology and Mobile Lawyer volumes of the 2006 American Bar Association Legal Technology Survey Report. The article is written by the manager of the project, Laura Ikens, Senior Research Specialist for the American Bar Association Legal Technology Resource Center.

This supplement offers an insider's unique perspective into how law firms are both adopting and utilizing trial technology, including: online research, electronic filing, mobile technology and hardware in the courtroom, litigation support software and electronic discovery.

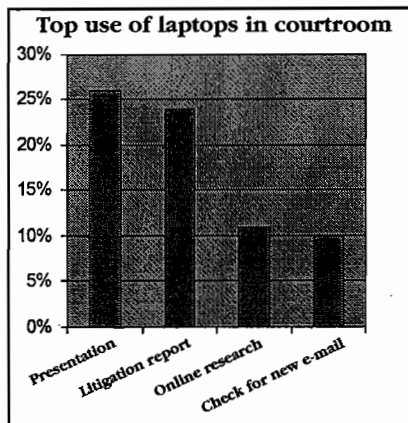
The ABA survey includes the responses of more than 2500 ABA members in private practice in the U.S. and offers a comprehensive look at how the legal profession uses technology. It covers issues including: technology training, budgeting, hardware and software purchases, as well as where and how lawyers use technology. The survey is broken into five volumes, which focus individually on law office computing, litigation and courtroom technology, Web-based communications, online research, and mobile technology. We believe it is the most comprehensive and useful tool of its kind available and hope that you find this analysis enlightening and informative.

— Adam Schlagman, Esq., Editor-in-Chief

By Laura Ikens

Read the legal press and you'll think that litigation technology and technology in the courtroom are all the rage. And for some attorneys, it is. But the results of the annual *ABA Legal Technology Survey*, published in June 2006, show that most attorney-respondents do not have a lot of sophisticated trial technology available to them and seldom use even laptops or notebooks in the courtroom. Moreover, many respondents don't know what

Table 1



technology is available to them and don't receive any training in courtroom technologies. There are signs of hope, however. Electronic filing has become nearly universal in federal courts, electronic discovery requests are popping up more frequently and should continue to rise with the implementation of the amendments to the Federal Rules of Civil Procedure on Dec. 1, 2006, and more and more research is being done electronically. All these point to the increased assim-

ilation of some technology into the law firm and the courtroom.

While law firms and attorneys understandably can be cautious about wholesale implementation of new technology, it's important to consider that these new technologies can lead to better presentation and better understanding on the part of jurors as information is presented visually and in media that younger, more tech-savvy jurors can identify and relate to. As more generations that grow up with technology come of age, better technology presents evidence in ways that are appealing and easy to understand. Technology can also aid jurors of all ages in understanding complicated sequences of events and other complex information that is better understood visually and can easily be displayed electronically. The many litigation support and trial presentation products available can help jurors of all generations effectively understand and process evidence.

The American Bar Association's Legal Technology Resource Center conducts an annual survey of members in private practice, published in five volumes. The Litigation and Courtroom Technology and Mobile Lawyer volumes show that the number of respondents bringing their own equipment (laptops and PDAs) into the courtroom has essentially stayed stagnant over the past two years; additionally, the number of respondents reporting that particular types of hardware are available in their courtroom has stayed the same or decreased. (See Table 1, above left.)

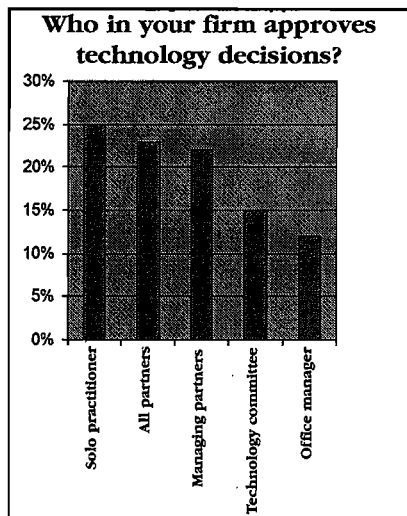
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However, the use of electronic filing is becoming more pervasive as more courts make it available, and instances of both receiving and making electronic discovery requests, while not widespread, are on the rise.

**Table 2**



### BUDGETING AND PLANNING

The good news is that attorneys are planning for technology. The survey showed that 60% of firms budget specifically for technology. This figure is correlated with firm size: only 35% of solo practitioners specifically budget for technology, while the numbers greatly increase to 90% for firms of 50 to 99 attorneys, and to 85% for firms with over 100 attorneys. In the case of the larger firms, "don't know" responses made up most of the balance of responses. Only 31% of firms have technology committees, not a significant increase over the previous year, but again, firm size plays a role in this: only 6% of small firm lawyers have a technology committee, while 74% of large firms have one. In most firms, all partners make technology decisions (23%), followed by the managing partner (22%), technology committee

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(15%) and the office manager (12%). (See Table 2, below left.)

It is worth noting that while large firms almost universally budget for technology and have technology committees, smaller firms would be well-served by doing the same. As the legal technology market continues to mature, more and more solutions suitable for small firms are becoming available. By planning, looking forward at where the industry is going, and choosing among the many effective tools that are available for evidence presentation, electronic discovery and litigation support, small firms can leverage their technology dollars and implement reasonably priced solutions. The playing field is more level and smaller firms can get in on the action.

The Litigation and Courtroom Technology volume of the survey asks about respondents' courtroom practice and what types of technology they use. In this year's survey, 63% of respondents practice in the courtroom; 22% of those respondents are in the courtroom at least once per week and another 30% practice in the courtroom one to three times per month. Small firm respondents (two to nine attorneys) are

**Table 3**

	NUMBER OF LAWYERS AT ALL LOCATIONS					
	Total	Solo	2-9	10-49	50-99	100 or more
Desktop computer	70.5%	75.1%	78.7%	72.0%	67.5%	55.2%
Laptop computer	15.5%	19.9%	14.0%	13.7%	17.6%	13.8%
Laptop with docking station	13.4%	5.1%	6.9%	13.5%	14.2%	29.9%
PDA/Smartphone/Blackberry	1%			2%		4%
Tablet PC	3%			7%	6%	4%
Other	2%		3%			4%
<b>Total</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>
Count	2332	334	649	453	169	522

in court most often, with 34% saying they are in court one or more times per week; solo practitioners are close behind with over one quarter (27%) in court once a week or more. The most common practice areas among our litigator respondents are family law (55%), personal injury (35%), general practice (33%), estates, wills and trusts (32%) and real estate (26%).

Among our litigation respondents, 64% say they never use a laptop in the

courtroom. Interestingly, solo practitioners are the ones least likely to use a laptop in the courtroom (75%), yet in the Law Office Technology volume of the Survey, 71% of solos indicated that they have laptops available for their use. Similarly, 68% of litigator small firm respondents said that they never use a laptop in the courtroom, but 75% of small firm respondents said that they have laptops available for their use at their firms.

However, in the Law Office Technology volume of the ABA Legal Technology Survey, respondents are asked what type of computer is their primary computer at work. (See Table 3, below.) Only 16% said that a laptop was their primary computer. Broken out by firm size, the solo practitioners have the advantage, with 20% saying a laptop was their primary computer and 14% of large firm respondents (over 100 attorneys) working primarily with a laptop. Lack of familiarity with the laptop itself might keep attorneys from using them in the courtroom.

Those that do use a laptop in the courtroom use it predominantly for presentation (26%) and litigation support (24%). Other uses are connection to the court's system (12%), online

research (11%) and checking for e-mail (10%). These numbers have increased slightly or have remained steady compared to the previous survey.

Sixty percent of litigator survey respondents in the Litigation and Courtroom Technology volume don't use personal digital assistants, smartphones or Blackberrys while in the courtroom. Again, broken out by firm size, almost three-quarters (73%) of

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solo practitioners and two-thirds (66%) of small firm respondents, but only 39% of large firm respondents, said they never use these devices in the courtroom. In this case, it's more understandable that the solo and small firm respondents are not using the devices in the courtroom because fewer have them available. However, attorneys at firms of any size should consider the utility of these devices in calendaring, e-mail and even online research. A caution is in order here: Many courtrooms have strict rules and prohibitions against cellphone use in the courtroom, so phone service should be turned off before bringing these devices into many courtrooms.

### HARDWARE AND SOFTWARE AVAILABILITY

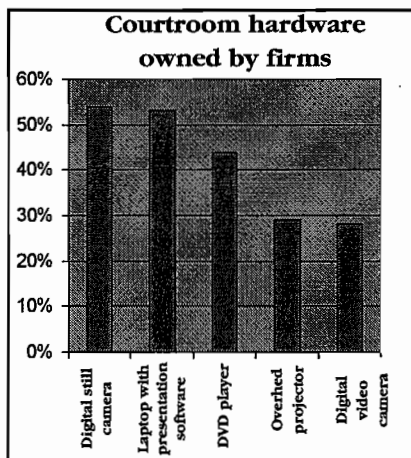
Is the relatively low use of laptops and other devices in the courtroom due to unavailability of these items at the firm level? For laptops, that's generally not the case. In the Law Office Technology volume, respondents are asked whether various types of hardware and software are available for use at their firms. While 82% say they have laptops available to them, that number goes down a bit for the solo practitioners (71%), and increases as firm size gets larger (94% for attorneys in firms with 50-99 attorneys and 92% for attorneys in firms of 100 or more attorneys).

Almost half (49%) of respondents have smartphones or Blackberrys available to them. Few respondents have either a portable scanner (9%) or a portable printer (23%) available. However, more attorneys in large firms have access to these items than those in small firms. The gap is particularly high for smartphones or Blackberrys, where only 18% of solo practitioners — but 88% of large firm respondents — have them available. Since small firm attorneys and solo practitioners are our most frequent courtroom practitioners, this might explain the low use of some of these devices in the courtroom.

The situation with software shows the same gap between large firm respondents and solo practitioners or small firm respondents. Overall, 66% have remote access software available to them, but only 28% of solo practi-

tioners have it. The situation improves with firm size, with 59% of small firm participants and over 90% of large firm respondents and respondents from firms with 50 to 99 attorneys having access to remote access software. The gap is high for transcript or deposition

**Table 4**



management software, with 28% overall having the software available; however, 61% of large firm respondents but only 8% of solo practitioners have it. The figures for trial presentation software are similar: 26% overall, while 54% of large firm respondents but only 7% of solo practitioners have trial presentation software available to them.

The Mobile Lawyers volume asks respondents about their use of computers while away from the office. Overall, 81% of respondents use a laptop while away from the office; 81% of solo practitioners and 86% of large firm respondents said they use laptops while away from the office. However, when asked how often they use their laptops in the courtroom, only 8% said they use them regularly, 16% said they use them occasionally in the courtroom and over half (51%) said they never use laptops in the courtroom. The same questions were asked about personal digital assistants, smartphones and Blackberrys while away from the office. Over half (55%) of survey respondents say they use these devices outside the office, but again, the gap exists between firm sizes: only 44% of solos and 45% of small firm practitioners use PDAs, smartphones or Blackberrys, while 81% of large firm respondents use them. Courtroom use of these devices is higher than laptop use, with 34% using them regularly,

22% using them occasionally, and only 31% saying they never use them in the courtroom.

### COURTROOM TECHNOLOGY

Many courtrooms still do not have technology available, or if they do, attorneys are not aware of its availability. The VCR is the device most-often available in courtrooms at 59%, followed by the television (46%), the overhead projector (44%), the DVD player (33%) and the analog audiotape player (31%). Other, more sophisticated, technologies are not showing up in the courtroom: Only 5% have color video printers available, 8% have evidence cameras, 9% have telestrators available, 10% have light pens or electronic whiteboards and 13% have integrated lecterns or evidence presentation units. For almost all the courtroom devices asked about, at least 25% — and often more — respondents indicated that they did not know whether the devices were available. Additionally, for almost every device, the availability figures were the same or less than in the previous survey.

Understandably, because of the lack of sophisticated equipment in the courtroom, less than a quarter of the respondents have received training in courtroom technologies (24%). Of those who did receive training, the most common vehicle was a court-sponsored training course, followed by training materials provided by the court.

For the most part, firms are not buying courtroom hardware. The hardware devices most likely to be owned by firms are the digital still camera (54%), a laptop equipped with presentation software (53%) and the DVD player (44%). (See Table 4, above left.)

### LITIGATION SUPPORT SOFTWARE

We saw a significant drop in the number of respondents who have litigation support software available at their firms this year, down from 49% in the previous survey to 29.5% currently. (See Table 5, on page 4.) Almost half of those who have the software available to them use it, with the transcript/document management feature being the most important (78% rate it very important), followed by access to evidence (72%) and document imaging (68%).

Respondents use litigation support software to search for documents

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(93%), scan documents (70%) and code and file documents (66%). Thirty nine percent of respondents to the survey said they would be "very likely" to purchase litigation software at a client's request.

Table 5

	NUMBER OF LAWYERS AT ALL LOCATIONS					
	Total	Solo	2-9	10-49	50-99	100 or more
Yes	29.5%	6.8%	13.9%	37.4%	50.0%	67.7%
No	56.2%	90.7%	77.6%	32.2%	13.2%	2.4%
Don't know	17.3%	2.5%	8.5%	30.4%	36.8%	29.9%
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Count	1727	442	496	342	114	331

### ONLINE RESEARCH

The use of electronic resources in legal research continues to rise, according to the results published in the Online Research volume. Almost all of the respondents to the survey conduct legal research online, using both free (87%) and fee-based (83%) resources. The number of respondents who regularly use print resources is down to 58% in the current survey. For the first time, print was not chosen by respondents as the dominant format for any of the research resources mentioned in the survey. However, a significant number still use print for treatises and secondary materials (33%).

The use of electronic resources for research enables attorneys to conduct research while away from the office. One quarter of those responding regularly conduct research at home using an Internet connection to a third-party Web site (73%) or to their firm's network, intranet or extranet (31%). Respondents are using their laptops to do research outside the office (39%), with solo practitioners (43%) and large firm respondents (44%) the groups most likely to do so. Only 8% of attorneys, however, are using smartphones or Blackberrys outside the office for legal research.

### ONLINE DEPOSITIONS

Most respondents (87%) say they have no need to participate in online

depositions, and 92% say they have never participated in an online deposition.

### ELECTRONIC FILING

Electronic filing is one of the bright spots on the legal technology front. The CM/ECF initiative on the federal front is almost complete; according to the U.S. Court CM/ECF Web site, 98% of federal courts are now on the system

and most of those accept electronic filings. At the state level, 24% say electronic filing is voluntary in their state courts and 8% say it's mandatory. In the local courts, 18% say electronic filing is voluntary and 10% say it's mandatory.

Because of the prevalence of these electronic filing initiatives, more and more attorneys are using electronic filing, with 11% saying they or their staff file documents electronically one or more times a day, 15% filing one to four times a week, and 14% saying they file electronically one to three times per month, generally higher than in the previous survey.

### ELECTRONIC DISCOVERY

Talk of electronic discovery is all the rage. Scan the legal press, and it's everywhere you turn. While electronic discovery has made headway in the last year, it is still not all that common among respondents to the survey. Almost two thirds (62%) say they have never received an electronic discovery request, down from the previous survey (81%). However, 79% of solos have never received an electronic discovery request. Most respondents use litigation support software to handle electronic discovery requests as opposed to electronic discovery consultants.

Almost 70% have never made electronic discovery requests. We can expect this number to change with the December 2006 amendments to

the Federal Rules of Civil Procedure, as attorneys are now forced to deal with discovery of electronic information early in the litigation process.

### WHAT TO DO?

Availability of basic hardware for courtroom use (laptops with presentation software and projection devices in the courtroom) does not seem to be the issue. Some basic tools are there and ready for action. As more attorneys get the technology bug and realize its utility for effective presentation and organization in the courtroom, how should they proceed? The first step is to see what the judge will allow. Attorneys should check with the court and see what is allowed and what type of hardware is actually available in the courtroom. Even if the plan is to just bring a laptop in, the attorney should make sure there is an outlet available to plug in the power supply, and to bring sufficient battery backup in any event. Additionally, the attorney should always plan for failure: judges can be understanding of one technology failure, but in the case of a serious problem with equipment, the attorney should be prepared to proceed without the technology. Paper exhibits should always be available.

If the courtroom has more sophisticated technology available, schedule an orientation session with the court. The attorney should be familiar with the technology so that he or she can use it with ease and without fumbling. Many courts with up-to-date technology have manuals available to familiarize the attorney with the equipment, but nothing beats a visit to the courtroom to test drive the machines.

To foster effective case organization and presentation of evidence in the courtroom, firms of all sizes can leverage their technology dollars and obtain powerful tools to gain advantage in their cases. Firm size need not be a limitation as software and services proliferate. The savvy firm will budget for technology, survey the landscape and act accordingly to gain the technological edge in litigation and courtroom practice.

