

4 Ways Coronavirus May Forever Change Legal Tech

By **Cara Bayles**

Law360 (June 15, 2020, 2:55 PM EDT) -- When the novel coronavirus closed down courthouses and law firms, technology allowed attorneys, their clients and judges to move litigation forward without jeopardizing public health.

Some of those emergency fixes could stick around even after life returns to normal. Legal experts say embracing remote technology has boosted efficiency, transparency and access to the courts.

Here are some of the top tech fixes that attorneys hope will stick around after the pandemic.

Video Hearings

When courthouses shuttered in March, some judges, like the Northern District of California's Judge James Donato, didn't want to stop oral arguments. He preferred to hash out questions with attorneys, rather than issuing rulings based solely on the papers.

So he and many of his colleagues took to Zoom, using the webinar format with attorneys presenting as "video panelists," and audience members watching as they would from a courtroom gallery. At first, Zoom access information was only available via PACER, but in late May, the district made video hearing logins publicly available on its website.

Now, Donato would like to offer video hearings even once the San Francisco courthouse reopens.

"I think this is a real breakthrough moment in access to the courts — public access, client access. It's a huge revolution for the better, in getting more people to see what we do," he said.

Video hearings open up the courtroom to people who can't make it to San Francisco, from young attorneys who want to watch oral arguments in the litigation they're working on but can't take the time to commute, to corporate clients who "are writing massive checks, and never watch their lawyers," Donato said.

A former BigLaw partner himself, Donato thinks the webinars could improve lawyers' work-life balance. He remembers flying from his home in San Francisco to attend hearings in Boston that rarely took longer than an hour. While the arguments were vital to the case, the cross-country trip took a toll.

"I would fly out there constantly, and it would be a two- or three-day trip for 45 minutes in court. That disrupts your whole week, disrupts your office, disrupts your home," he said. "I hope the two-day trip for a one-hour hearing is a thing of the past, and we just do it on webinar. I think that's going to have tremendous value, making being a lawyer less burdensome on families, much more cost efficient, maybe even greener."

Other courts systems, like New York state court, always required attorneys to attend in person, even for status conferences or calendar check-ins, according to John Magliery, a partner at Davis Wright Tremaine LLP.

He wouldn't necessarily want to argue motions remotely once courthouses reopen, he said, but New York adopting that technology for other in-court appearances could be a game-changer.

"We're seeing scheduled Zoom conferences where quick check-ins on things like discovery compliance are being achieved much more expeditiously and at much less expense," he said.

Client Dashboards

Another way to boost transparency is through online dashboards, according to Tess Blair, founder of Morgan Lewis & Bockius LLP's eData practice.

Dashboards have long allowed clients to look at which attorneys are working on a case and how much they're billing, but they're also functioning as a communication tool. Clients can log in and see what evidence and data attorneys have compiled, and how they are analyzing it, Blair said.

"They can see all the key factual pieces of their case, and can run reports and do searches and run [an] analysis of the data," she said. "That's another way to interact with us, but also with our work."

Blair said while lawyers have been especially careful during the pandemic to reach out to clients, it's good to offer an option that allows clients to see what's happening in real time, without having to make a phone call.

"That's become really important in this remote working environment, to push information out to clients, to give them insight into their cases, into their data — not just what we're billing, but what we're seeing and the analysis that we're doing," she said.

Telecommuting has also sparked internal interest in dashboards among the attorneys at Ballard Spahr LLP, according to Jim Boyer, the firm's director of matter management and efficiency.

Lawyers are using the technology internally now as a case management tool. The technology has existed at Ballard for about a year, he said, but working from home has driven more widespread adoption.

"The tools are infinitely customizable, and we can make quick adaptations to any practice group or legal team," he said. "We really built a foundation here. But since the pandemic, people have started to really understand the technology and what it can do for them and how easy it is to use."

Video Depositions

To keep litigation moving, attorneys have turned to remote depositions via video.

Magliery, a commercial litigator with 18 years of experience, was skeptical the format could work. So much of a deposition is about reading a witness' body language and facial expressions, and being able to confront them with evidence by sliding a piece of paper across the table, he said.

"Depositions are cross-examinations," he told Law360. "Sometimes you want to ask buildup questions, and then you want to confront the witness with something contradictory to what they're saying."

But the technology worked "remarkably well," Magliery said. It allowed him to enter exhibits into evidence remotely, and pull up documents on screen to confront the witness, so he wouldn't lose the element of surprise. He used his home computer's monitor and his laptop, so he could have two screens — one to look at the document he was referencing and one to keep an eye on the witness' reactions.

"The technology allowed us to upload the document instantly to both the witness and opposing counsel, so they could then see the entire document. And using screen-share technology, we could also show an excerpt of the document to the witness."

Magliery wouldn't want to use video technology for every deposition once the pandemic ebbs. He would ideally be there in person to take the testimony of an adverse party, for example. But he could see remote depositions continuing to work for third-party witnesses; people he wants to subpoena for factual information, not admissions.

"It saved a lot of client money in travel expenses and it saved a lot of time to be able to conduct these remotely," he said. "I would think there could be circumstances in the future where I would be comfortable using some remote depositions in a case."

Automation

Law firms, mindful that their clients' purse strings are tightening amid the pandemic-fueled recession, are now turning to technology for the busywork that can eat up a lot of billable hours.

That means the pandemic has forced litigators to consider how automation and machine learning can help write pleadings.

That technology has been around for a while, according to Blair. But in the past, it's been relegated to contract work.

The firm has long used systems that, through machine learning, can recognize contract terms and conditions. Attorneys can ask the program to spit out an ideal contract.

But now, what was "a very hot trend on the transactional side of the practice" is being applied to court pleadings, Blair said. It's especially helpful when defending a client that's facing serial litigation with multiple complaints.

"The machine can read those complaints and can identify the differences between them, the anomalies, so that we can quickly generate responses," she said.

That can save attorneys time and their clients money.

"We're looking at ways to innovate, to semiautomate the process where we can, so lawyers can spend their time doing the high-value work, and the machines can do the rest, hopefully," Blair said. "We've doubled down on that during COVID, because we know our clients are under tremendous economic pressure."

--Editing by Rebecca Flanagan.

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