

PERSPECTIVES FROM THE BENCH: TECHNOLOGY IN THE PITTSBURGH COURTROOM

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Volume XI, Spring 2011



Judge Nora Barry Fischer has served as a district judge for the United States District Court for the Western District of Pennsylvania since 2007, when she was appointed by President George W. Bush. Prior to her service as a district judge, Judge Fischer worked as a legal editor at Callaghan & Company, was a partner in private practice at Meyer Darragh Buckler Bebenek & Eck, and was an equity partner at Pietragallo Bosick & Gordon. Additionally, Judge Fischer worked as a trained mediator and arbitrator in Pennsylvania and West Virginia. Judge Fischer is a Fellow of the American College of Trial Lawyers, an active member of the Executive Women's Council of Pittsburgh, a past President of the Academy of Trial Lawyers of Allegheny County, and a member of the Pennsylvania Bar Association Commission on Women in the Profession, where she serves on the Mentoring Subcommittee. She received a Bachelor of Arts Degree magna cum laude from Saint Mary's College, and a JD degree from Notre Dame Law School in 1976.

This spring, members of the Pittsburgh Journal of Technology Law and Policy had the great honor to sit down with Judge Fischer to discuss the use of technology in Pittsburgh courtrooms. Following our discussion, we enjoyed a tour of Judge Fischer's courtroom, observing and experiencing the technology firsthand.

JTLP: There are varying levels of technology used in the different courtrooms in the federal courthouse. What technology is being used in your courtroom, and what do you think about that technology?

JUDGE FISCHER: First off, my courtroom is one of six new courtrooms. They were designed in the early 2000s and then implemented in 2003 and 2004. At that point in time they were considered the most technologically advanced courtrooms in the United States. All of the other courtrooms have technology to a degree, and the Magistrate Judges, until recently, had what was called a technology cart, so various pieces of technology could be brought to their courtrooms in an effort to upgrade their situation. We are gradually improving all of that in the courtrooms.

Also for a long time Magistrate Judges did not always try cases, particularly jury trials. But here, a number of years ago, before I came on the bench, it was decided that our Magistrate Judges would go on the wheel, which means that they, like I, have the opportunity to try cases. So, if they are actually trying cases, non-jury or jury, they are going to have more need for technology than what may have been envisioned when those courtrooms were initially designed. So, that's probably one reason why you see the difference. Now, in terms of what we see in our courtroom, much varies depending on the case, the style of the case, the attorneys that are involved, and how much technology they do or don't use.

JTLP: Is there any equipment that you would like to see implemented in your courtroom?

Judge Fischer: I think what we have right now is very satisfactory to our usage. One thing that I'm very pleased to have is a tool called LiveNote. LiveNote permits the judge to see a rough draft of all of the proceedings as the court reporter takes them all down. And that's particularly helpful to us when we are hearing testimony. For example, it's helpful in some instances to be able to look at the screen and read the questions while there is an objection pending.

Now, in order to do that kind of work, court reporters need to be Real-Time Certified. A number of our court reporters are Real-Time Certified. How that works is that there is literally a connection between the court reporter's stenography equipment and the computers that are accessed not only by me, but also by my law clerks. For the law clerks this is a tremendous boon to their productivity. As noted, I use it because it helps me with objections. They use it because they can go into the document and they can highlight, tag, and even take notes. So, particularly for those hearings where we are going to ultimately do conclusions of law and findings of fact, that's very helpful to them. LiveNote is more recent than the other pieces of longstanding equipment in our courtrooms.

Right now we are "wired" so that if you bring in a PowerPoint or if you put all of your documents onto a disk and you want to show your documents to the judge, opposing counsel, and the jury, you can do that. Frankly, depending on the lawyer, some take full advantage, some don't.

The other tool that we have in our courtrooms that I think a number of the practicing bar don't use enough, is the ability to videoconference and bring in witnesses live. I'm surprised that more practitioners don't use that technique and its availability to advance their case, particularly when

you're dealing with insurance company representatives. A number of insurance company representatives will balk at coming here and spending a day. They all want to attend by telephone. The problem with that is that they could be multitasking, and they might not be paying attention to everything that is going on, and there are nuances that happen in a settlement conference or mediation that you need to observe firsthand. The other thing is, if they are remote and they don't have videoconferencing, they don't see the parties, and they are missing a lot of the communication that is going on. So, I am insistent, because I was trained as a mediator and did mediations in private practice, that the parties and their representatives who have authority to settle must all be present. You can be present by videoconference.

From the client's point of view, as well as the practitioner's point of view, it saves time and money. And in this competitive marketplace, if you want to get more business, you don't want to run up an enormous bill on a matter. You can tell your client, "Here's one way we can save money, and you can participate, and you can satisfy the judge's requirements-the court has videoconferencing." It is as simple as working with our IT department to arrange it all in advance.

Just in this conference room alone I have a laptop and I can access my email and anything I want to here. And we now have two computer stations here that are used either by volunteer clerks or by interns; and that's just in the four years that I have been here. All of my clerks have had upgrades in computers. All of my clerks now have dual screens, and they could have triple screens if they wanted. That makes them much more efficient than they had been. I told you about LiveNote. As far as the hard equipment in our courtroom- there have been upgrades. We have gone through various Microsoft upgrades here. We are also going through upgrades for CM-ECF. All of these things are constantly changing and getting better.

JTLP: Is there anything that you read to keep up on technology issues that might be appearing before your court, or anything that you would recommend that attorneys read to keep up on technology issues related to Pittsburgh?

JUDGE FISCHER: First, Judge Conti and I are part of a group called "Friends of E-discovery." We attend those meetings, which are held quarterly. Often times, prior to those meetings, an agenda is circulated with written materials. Secondly, the judges receive lots of periodicals online, and it's incumbent on us to read them, and we try to do that as much as we can.

Thirdly, a number of us have been very active working with the Federal Bar Association, which does quarterly programming on e-discovery issues, and so by speaking at those programs, you have to become conversant. When I first came to the bench, we started an e-discovery binder here, and everything and anything that we came across, whether it was in the Allegheny County Bar Journal, or the Pennsylvania Lawyer, or in the ABA Journal, we clipped it. And we were doing the same with regard to cases. Now, we're seeing more cases coming down, and so we're not keeping that binder up as much, but it's a starting point for analysis and research.

To that end, we pay attention to cases by Judge Grimm, Judge Facciola and Judge Scheindlin. Those three judges are out there on the cutting edge on e-discovery issues. We recently did a program on e-discovery for small cases. In order to prepare for that we looked at blog sites and read some of the cases. I had one of my law clerks research all the latest cases on cost-shifting in the Third Circuit. Most of those cases came out of the Eastern District of Pennsylvania and Delaware and New Jersey. So we took a look at those cases to prepare for the seminar. And, we are preparing for two other seminars which are coming up. We are going to be doing one on discovery, directed at third parties and the government. There's a recent decision by Judge Scheindlin that relates to Freedom of Information requests. We are also planning another seminar related to the Department of Justice and US Attorney's guidelines on e-discovery. And so, it will be directed more at the Criminal Bar. So that's another way, if you will, that we keep up.

In reference to my own cases, we have not had too many e-discovery issues lately. Early on, I had two that involved potential spoliation, and both of those cases settled. I've had a couple of cases where we have touched on the subject. I did have one case, though, on which we wrote, where there was an issue related to the documents and how they were maintained. Judge Conti is our current Chair of our ADR and case management committee and she is becoming, as much as she can, a guru in this area. So she is spending a lot of time learning this area, as well.

The other thing that all of us judges need to do is keep up on the technology. I have to say that I am poor in that regard. I am dependent, in large measure, on my law clerks who are much more technologically savvy than I. But, having said that, whenever we have any lectures or demonstrations in the courthouse, I make those mandatory for me and my clerks to attend. I think a number of judges have come to the conclusion that keyword searches are not the only way to search, that you need to educate the court if you're going to go with concept searching or something else. And, in addition to that, you need to be prepared for a potential *Daubert* challenge. So, the other thing I would say in terms of my own practice, in document intensive or e-discovery intensive cases, what I've taken to is doing periodic discovery conferences with

counsel and with a court reporter, as requested. To save counsel and their clients money, we do most of those by phone. We talk through issues; and, in 95% of the cases in which we do this, the issues get resolved.

Another thing that is happening is that the biggest law firms have within their law firms their own electronic discovery group. So they don't send the work out-they have people in-house that do all of this. For example, the Orrick Law Firm was a leader in doing that. Actually it has a satellite office in Wheeling that services their national offices. It initially started with round-the-clock word processing and computer data entry and now it has expanded so that they do e-discovery and they're actually hiring young attorneys there to do backup associate work. And so, electronically, somebody can be sitting in Wheeling working on a summary judgment motion and send it to the partner in San Francisco. I think you are going to see more law firms do that. Even here in town, a number of law firms have their "back office" in less expensive office space than their main offices, and it makes sense. Because somebody who is inputting data that relates to billing is not adding to the "pie" by working on client cases, to the extent you can reduce that cost factor, that helps increase the profitability of the firm.

The other thing that needs to happen more, I think, is that certain segments of the Bar need to become a little bit more savvy about the technology that they can use. This is an issue that has come up with me on a couple of occasions. For example, one party may question who pays for the copies. To that end, the savvy practitioner uses scanners, and there are new scanners out there that actually date-stamp documents. So, they load the documents and go from there. You are doing things once and not two and three times over. If you can use a piece of equipment that makes it easier, and you can use a paralegal or assistant to scan the documents for you, see what the cost saving is? And remember, Rule 1 of the Federal Rules of Civil Procedure! We're supposed to be striving for the efficient and just resolution of cases. So efficiencies through technology are things that skilled practitioners should be able to bring to the table. And that means lawyers need to know what technology is out there, available to them and appropriate from a cost standpoint.

One additional thing that is happening in some courts is that law clerks work remotely, but you don't have much of that here. That could be a cost-saving mechanism for the court. Just as law firms and businesses have to pay square footage, we do too. We pay to the General Services Administration. So, if you can reduce the amount of space needed by your clerks, the courthouse might be able to accommodate additional judges, or you might be able to put another agency in the spare space, and downsize the amount of space the court needs. One thing that is happening here on that front is that Senior Judges are not going to get individual courtrooms like they have

had in the past. Instead, our tenth floor is being built out as a Senior Suite, and you'll have offices for the Senior Judges and one courtroom that they will share. That, by the way, will have the latest technology in this courthouse when it is complete.

JTLP: Thank you, Judge Fischer.

The Pittsburgh Journal of Technology Law and Policy thanks Judge Fischer and her staff for their assistance and time in contributing to this piece.