

THE DAILY RECORD

WESTERN NEW YORK'S SOURCE FOR LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

Technology (already) invades the courtroom

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I've said it before and I'll say it again: The times they are a-Technological advancements are affecting courtrooms across the country, much to the consternation of many in the legal profession who staunchly resist technological change.

Two recent events — a decision from Appellate Division, First Department and live reporting of a trial via Twitter — are further examples that technology is here, and it's here to stay.

At the end of December, the First Department handed down its decision in *People v. Wrotten*, 2008 NY Slip Op 10226. At issue in *Wrotten* was whether the trial court erred in allowing the complainant to testify at trial via two-way, televised video.

The court held that the trial court improperly admitted the testimony since New York statutory law did not specifically provide for it, but also noted: "At the very least, even assuming that [the] defendant's Sixth Amendment right of confrontation was not violated, she was denied a valuable component of that right. In our judgment, in the absence of express legislative authorization, depriving [the] defendant of a face-to-face meeting with her principal accuser — indeed, the person whose testimony was necessary for the prosecution to make out a *prima facie* case — tainted the fairness of the trial."

The majority and the dissent in *Wrotten* noted that for a variety of constitutional and procedural reasons, federal and state courts are split on the issue of allowing a witness' court testimony via a live, two-way video feed.

While the law regarding live televised testimony remains unsettled, one thing is certain: It's an issue that won't go away.

Another technology trend that only will increase with the passage of time is live reporting of trials via micro-blogging services such as Twitter.

Twitter is a free, Web-based communications platform that allows users to share information with others with similar personal and professional interests. Users communicate using text-based posts ("tweets") of up to 140 characters in length.

Twitter has more than 3.2 million accounts registered, and its user base is expanding quickly. Twitter can be used in a variety of unique ways, which are evolving constantly.



Courtrooms are not immune from the effects of the popular phenomenon, as reporters increasingly seek to use Twitter to report live in the midst of trials.

The most recent example occurred in a Colorado courtroom. Wichita Eagle reporter Ron Sylvester sought to post to his blog and Twitter throughout the trial. As he explained on his blog, *What the Judge Ate for Breakfast* (<http://blogs.kansas.com/courts/>), his intention to do so stemmed from historical tradition: "The notion of public courts predates our Constitution and even the Magna Carta. There are records of public trials following the Saxon invasion in England, where trials were held on the public square of villages. Our public squares now include Twitter."

Over the objections of both the prosecution and defense counsel, the trial judge allowed the use of cell phones and computers in the courtroom during the child abuse trial.

Last week, Sylvester chronicled the happenings of the trial. At one point, he posted on Twitter about an evidentiary issue: "Getting ready for pretrial hearing of George Tiller, Day 2. 9:58 a.m. yesterday from txt"

"Judge Owens has called the hearing to order. He is ruling on whether Kline has to turn over personal diary to Tiller's attorneys. 10:28 a.m. yesterday from txt"

"Kline gets to keep his diaries private. 10:32 a.m. yesterday from txt"

"Owens ruled that 'work product' applies to prosecutors, such as notes on opinions and theories of a case. 10:32 a.m. yesterday from txt"

Many found it fascinating to watch the trial unfold live, as it happened, rather than reading accounts of it after the fact. Technology made that possible.

Technology has invaded our lives, our homes, our offices, our courtrooms. Technological change has made a lot of things possible that once were unimaginable.

Technology is here to stay. There's no looking back. Let's accept that fact and move forward, shall we?

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