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## Trial by TV

# More States Allow the Use of Videotapes in Court As Substitute for Live Appearances by Witnesses

By WILLIAM WONG

Staff Reporter of THE WALL STREET JOURNAL

WARREN, Ohio—It looks like anything but a legal proceeding.

Sitting in his office at Trumbull Memorial Hospital here, the doctor is surrounded by gleaming radiology equipment and thick volumes on medicine. He frequently holds up X rays and explains the medical situation in precise detail.

Despite the appearance, this is a legal proceeding—or at least it soon will become an important part of one. For the doctor is Dr. John Schlecht, who is an expert witness for the plaintiff in a personal-injury case arising from a local maintenance worker's fall from an allegedly defective scaffold.

The difference is that Dr. Schlecht, a radiologist, doesn't have to leave his office to present his testimony to the jury in the case. In response to a lawyer's questions, all his words and gestures are recorded by a videotape camera. His testimony—complete with cross-examination—will be shown to the jury, if the case comes to trial, on a television screen.

Trial by TV? That's precisely what's happening these days with certain testimony, mostly depositions such as the one Dr. Schlecht made, in some cases around the country. Either at a judge's discretion or through procedural-rule changes, videotaped testimony now is permitted in a number of states, including Ohio, Illinois, Florida, California, New Jersey, Pennsylvania and Alaska. More states seem certain to join the move before long.

Indeed, many legal authorities can scarcely contain their enthusiasm for videotape. Says Common Pleas Judge James L. McCrystal of Erie County, Ohio, who is considered a leading advocate of videotape in the courtroom: "It's the greatest tool handed to lawyers and litigants in a couple of hundred years."

### Saving Time

The big reason is that videotaped testimony can help save huge chunks of time, advocates say. For instance, had Dr. Schlecht been required to make the 120-mile round trip to Cleveland, where the trial will be held, it would have taken a major part of his day. In addition, he says, "I would have had to rearrange my schedule and get someone to take my cases for the day."

As it was, the two opposing attorneys—one from nearby Youngstown, the other from Cleveland—met a man from Sunray Inc., a Cleveland recording firm that frequently makes legal videotapes, and they spent about two hours preparing for the doctor's testimony and taping it.

Videotape advocates also contend that the medium could help unclog crowded court dockets. With testimony videotaped in advance, they say, more precise scheduling of trials could be achieved without the threat of delays caused by suddenly unavailable witnesses; busy expert witnesses, such as doctors, are sometimes called away by emergencies pre-

cisely when their testimony is needed. Obviously, the time of jurors and court officials is also saved in such situations.

"Videotape may be a partial salvation for those urban judicial districts that are heavily burdened with cases awaiting trial," says Guy O. Kornblum, a professor of law and former assistant dean of Hastings College of Law in San Francisco. Mr. Kornblum also contends that videotaped testimony can contribute "to the goal of a fair, impartial and efficient system of justice." He says this would result in part because most in-trial delays, such as objections, rulings and lawyers' technical arguments, would be edited out in advance by the judge trying the case.

### Widening Use

Videotape in the courtroom isn't entirely new, of course. In several states, federal-court trials have been videotaped for possible appeal purposes. And in some instances, mostly involving drunken-driving cases, videotape has been admitted as evidence. But only recently has it begun to be used fairly widely, usually in personal-injury civil proceedings.

Before videotape, it was—and still is—possible in some states to prerecord a key witness' testimony by the more traditional means of stenography, then have the written transcript read in court in lieu of a personal appearance by a witness. But given the choice between videotape and stenography, legal authorities almost unanimously favor videotape. Says William E. Pfau Jr., the Youngstown attorney who arranged Dr. Schlecht's video session: "I use videotaped testimony to better demonstrate to a jury a dramatic affect."

There also appear to be other advantages. When Dr. Schlecht pointed to the X rays of a fractured heel bone, for instance, the videotape camera zoomed in for a sharp close-up. To a layman, at least, it seemed doubtful that a jury would get as good a view if the doctor showed the X rays in court.

Moreover, stenographic transcripts "can't show pauses, laughter, demeanor of facial expressions" of witnesses, says Edmund W. Sinnott, a Chicago lawyer, who is so enthusiastic about videotape that he has started two video-recording companies, called "Depovision" and "Trialvision." "The reading of a transcript in court is very boring. Juries have been known to fall asleep," he says.

### Dissent From Court Reporters

The advent of videotape into the courtroom has stirred protest from stenographic court reporters, who are the persons most threatened by videotape's inroads. "TV is a toy, a gadget, a mess, prohibitive in cost, time-consuming, less accurate and less versatile than a court reporter," Martin Fincun, a veteran court reporter in Cleveland, told a recent conference of the Sixth Judicial Circuit of the U.S. in Cincinnati. While court reporters generally don't object to videotaped expert testimony such as Dr. Schlecht's, they scowl at unlimited use of the medium. "The jury and other parties involved are entitled to see one another live," says Patrick Holland, former president of the Ohio Shorthand Reporters Association.

Some skeptics also argue that videotaped testimony can put a jury to sleep just as fast as a transcript read in court. Some lawyers are wary of videotape because they fear that there wouldn't be a written transcript to leaf through, thus they wouldn't be able to quickly turn to a specific point. Most video-recording companies, however, contend that they can make a written transcript as easily as anyone else. Moreover, they offer the convenience of being able to go to the witness.

Stenographers also say the cost of their service is generally lower than that of making a videotape. In the case of Dr. Schlecht, for example, Sunray charged \$75 for the time on location, \$40 for the tape and \$20 for travel expenses. If the deposition is viewed in court, there is an additional charge of \$50, bringing total potential charges to \$185. A stenographic court reporter in nearby Youngstown would have charged about \$125 for the same job, including travel expenses, and there wouldn't have been an additional charge if the transcript was read in court.

### The Whole Truth—on TV

The growing use of videotape also raises the possibility that in the not-too-distant future, juries may make their decision based on testimony they have seen only on TV. In fact, Judge McCrystal of Ohio's Erie County last fall experimented with putting on videotape all the testimony in one trial, which involved a personal-injury civil suit. Thus far, it's believed that his experiment is the only one of its kind, but full video trials are possible, at least in Ohio. On July 1, a rule became effective that allows all the testimony in a given trial, at a judge's discretion, to be videotaped.

At the moment, of course, most videotaping involves individual depositions. Expanding its

use to entire trials, however, might have certain benefits. For instance, authorities note that in a videotaped trial, the judge and opposing attorneys, who would have already viewed the testimony for legal technicalities, wouldn't even need to be present when the jury viewed the videotape. Thus, a judge might be in his chambers editing testimony for another case, and the lawyers might be back at their offices working on other business.

Whether full trials on videotape will ever become common remains to be seen. Meanwhile, advocates say, videotaping individual depositions is becoming less expensive. And some law offices and even courthouses are considering establishing their own video studios, equipped with cameras and other equipment, which can be bought for about \$1,200. Such studios could be operated on a break-even basis, which would also cut costs. And the tapes, of course, are reusable.

Until that happens, video-recording firms are springing up almost everywhere. These firms are advertising in law journals, sending speakers to the podium at bar-association meetings and demonstrating the use of their equipment before groups of judges.

Videotape, however, can still pose certain problems. The most obvious is the potential for mechanical failure. At Dr. Schlecht's session, for instance, taping was delayed for a few minutes because the first three minutes of his deposition had to be repeated. The session also illustrated one reason videotape advocates are leaning toward using studios for taping, rather than "on-location" sites, as was the case with Dr. Schlecht's testimony. More than a dozen hospital personnel—nurses, orderlies, other radiologists—stopped by to gawk at the video equipment.

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# Times Mirror to Buy KTBC-TV in Austin From Lyndon Johnsons

Price Is Set at About \$9 Million;  
Purchase Must Be Approved  
By FCC; Divestiture Required

*Special to THE WALL STREET JOURNAL*

AUSTIN—KTBC-TV of Austin, owned by the Lyndon B. Johnson family, will be sold to Times Mirror Co. of Los Angeles if the Federal Communications Commission approves the transaction.

J. C. Kellam, president of Texas Broadcasting Corp., and Franklin D. Murphy, chairman of Times Mirror Co., jointly announced the agreement. The price involved about \$9 million in cash.

KTBC, affiliated with the CBS network has been broadcasting from Austin since 1952. It is the only VHF station in the city. There are two UHF stations.

The officials said Texas Broadcasting was required under a 1970 FCC regulation to divest itself by Aug. 10, 1973, of either the television station or its stock interest in Capital Cable Co. of Austin, a community antenna operation.

Texas Broadcasting will continue to own and operate an AM and FM radio station in Austin, the officials said.

Times Mirror Co., a publicly held California corporation, publishes the Los Angeles Times. It acquired the Dallas Times Herald in 1969 and operates KDFW-TV in Dallas.