

Courtroom 21 Court Affiliates Protocols for the Use By Lawyers of Courtroom Technology

March 14, 2004 Working Draft

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Preface

Although yielding exciting and fruitful improvements in the nature of trials, the rapid expansion in the use of courtroom technology in state and federal courts has also presented us with an increasing number of difficulties. These range from communication gaps between court and counsel concerning court technology availability and policies for use to the court's likely reaction to technical failures during trial. The Courtroom 21 Court Affiliates discussed these matters extensively during their 2003 annual meeting in Williamsburg at William & Mary Law School. California Affiliates unable to attend the annual meeting due to budget constraint addressed the matter at a special meeting held in San Francisco in the Fall. Courtroom 21 staff subsequently reviewed the Affiliate's positions and produced the first working draft, which was circulated to the Affiliates for review and comment. These Protocols are the product of the collective experience of judges, trial lawyers, court managers, and legal technologists.

The material that follows represents the collective experience and recommendations of the Courtroom 21 Court Affiliates to date. The Protocols are a form of "best practices" and should evolve with time. They are not intended to be court rules, but rather recommendations to bench and bar. It is the hope of all concerned that they will spur further discussion of these important pragmatic matters.

§ 1 Definitions

§ 1-10.00 "Courtroom technology"

For purposes of these Protocols, "courtroom technology" is the technology installed or used in a courtroom by or for counsel or pro se parties. It includes court record technology only to the degree that counsel or pro se parties use that technology during a trial or hearing for purposes other than preparation of appellate matters.

Commentary

The primary purpose of these Protocols are to assist the court and counsel in their interactions concerning courtroom technology. Accordingly, the Protocols use a narrow definition of "courtroom technology." A broader definition, which would include court record technologies for the purpose of making the record for appellate purposes (or to assist the judge during trial), any of the docketing, case management, legal research or other technologies used entirely by the court, and the like are outside these Protocols.

§ 1-20.00 Types of courts

§ 1-21.00 "Prohibitive courts"

A "prohibitive" court is one that prohibits by rule or custom all or nearly all use of courtroom technology.

§ 1-22.00 “Permissive courts”

A permissive court is one which permits but does not require significant use of courtroom technology.

§ 1-23.00 “Mandatory courts”

A mandatory court is one which requires the use of one or more forms of courtroom technology.

Commentary

These Protocols do not customarily distinguish among the three types of court specified in their application. They are defined, however, for two primary reasons: the classification may be helpful in describing courts, and some believe that mandatory courts owe a greater degree of assistance to counsel who have technical difficulties than do other types of courts. *See* § 4 *infra*. Most courts are believed to be permissive. However, anecdotal evidence indicates that some courts are mandatory, at least insofar as presentation of documentary evidence is concerned in large document cases. Although there have been reports of prohibitive courts none can be said with assurance to actually exist.

§ 2 Counsel’s Duty to the Court and Client

§ 2-10.00 Counsel’s duty of competence

Counsel who use courtroom technology should be competent in doing so. Non-court personnel who assist counsel in the operation of courtroom technology act as counsel’s agents and are equally bound by the duty of competence.

Commentary

Whether counsel may sometimes have an ethical duty to use courtroom technology to effectuate their ethical duty to represent the client zealously and competently is a matter not addressed by these Protocols. Counsel do have an obligation to use courtroom technology competently when they attempt to do so, however. Incompetent use of courtroom technology likely results in wasted court time and possible waste of court resources (if staff attempt to assist counsel). Given counsel’s position as officers of the Court, such waste should be avoided. Further, given counsel’s duty of competent representation to the client and the risk that incompetent use of technology may harm the persuasive nature of counsel’s case presentation, counsel’s ethical duties to the client also impel a duty of competent use.

Absent Court requirements to the contrary, counsel need not personally operate courtroom technology. They may rely in whole or in part on staff or third party vendors. However counsel’s duty to use courtroom technology competently is not affected by the actual operation of that technology by others; those operating the technology act as counsel’s agents unless the Court requires that court personnel operate the courtroom technology..

Competent use of courtroom technology in the context of any specific case usually requires compliance with the remaining portions of § 2-10.00. The Protocols do not define “competence.” however, leaving to another day a possible set of detailed standards.

§ 2-11.00 *General awareness of customarily used or available courtroom technology and the nature of any Court policies or informal practices concerning its use*

Counsel should have a basic familiarity with the general types of courtroom technology applicable to trials of the type to be tried by counsel and the nature of any Court policies or informal practices concerning its use.

Commentary

Proper use of courtroom technology requires that counsel either directly or through the active participation of other, knowledgeable, persons, understand the types of courtroom technology potentially useful in the litigation. Competence implies more than just the ability to operate given technology adequately; it implies the ability to choose the type of technology to be used to effectuate the goals of the representation. Counsel have no obligation to use technology. However, at least in the abstract every counsel should be aware of those options which might enrich the presentation of a case. At the very least, counsel who choose to use courtroom technology ought to be able to make an intelligent and reasonable selection among available technological options.

§ 2-12.00 *Awareness of available court-supplied technology and the nature of any Court policies or informal practices concerning its use*

Counsel should be aware of the nature of any courtroom technology available through the Court and the nature of any Court policies or informal practices concerning its use.

Commentary

Courts are increasingly making courtroom technology available to counsel involved in a hearing or trial before the Court. This technology may exist in the form of installed technology in the courtroom, including full integrated high-technology courtrooms, wired courtrooms that are augmented in a given case by court supplied cart-based courtroom technology, or via court-owned or controlled courtroom technology that may be made available to the counsel. Court supplied technology often is available to counsel at no cost and its use and operation is understood and perhaps even supported by the Court. In order to make intelligent and reasonable decisions about whether to use courtroom technology, what technology to use, and whether to seek Court consent for counsel to bring into the courtroom non-Court technology, counsel must have an adequate awareness of any courtroom technology that is available from the Court.

In making a decision about the possible use of courtroom technology counsel, must be aware of any Court policies or informal practices concerning its use. This is especially true should the Court be either a prohibitive or mandatory one.

Many courts require counsel to present their case from a single location, often a lectern or podium equipped with courtroom technology. From a trial practice perspective, counsel need to know whether they are free to depart the podium and whether they are able to operate the courtroom technology from other locations (including use of a portable remote control). Many courts have noted that counsel sometimes ask, often with little or no notice, to relocate technology-equipped lecterns or podia. Courts often have policies concerning this with which counsel should be familiar before the trial of the case.

§ 2-13.00 Familiarization with operation of courtroom technology

Counsel should be familiar with the method of operation of any courtroom technology to be used in the trial or hearing and the implications of that operation for the trial or hearing

Commentary

Counsels' duty of zealous representation to the client as well as counsels' status as officers of the court impels the conclusion that counsel should understand the probable impact of the planned use of courtroom technology on the trial of the action. Installed display equipment in some courts may require that the courtroom lights be dimmed or darkened entirely, either of which could negatively affect a counsel's planned presentation of evidence, opening statement, or closing argument.

§ 2-14.00 Competence in the use of the technology

When using courtroom technology, counsel or their agents should use that technology in a competent fashion.

Commentary

Competent use of courtroom technology requires that counsel or their agents understand how to use that technology. An inadequate understanding likely will result in either the reality or appearance of a malfunction, usually interrupting trial. Use of a computer to present a case usually requires, for example, the operator's understanding of how to connect the visual output of the computer to a display device (or courtroom visual display system). Counsel who fail to properly set a computer's power saving software have a high probability of having the computer suspend its operation unpredictably in one form or another which may not only interrupt a counsel's case presentation but also lead to the erroneous inference that the system has malfunctioned and that counsel need a lengthy recess to recover from the perceived problem.

§ 2-20.00 Shared use of technology

§ 2-21.00 *In general*

Counsel seeking to use courtroom technology in the most cost-efficient fashion ordinarily are best served by joint use of the technology planned for a given trial or hearing. When non-Court owned or controlled technology is to be used, joint acquisition and use is best effectuated by advance planning and coordination among the parties. However, in non-criminal cases unless otherwise required by Court rule or order, non-Court owned or controlled technology obtained by one party at its own expense need not be shared with other parties, each of whom is responsible for the acquisition, installation, and operation of that party's courtroom technology.

Commentary

Some of the reasons for the installation of high-technology or technology-augmented courtrooms is to provide an equal playing field for all parties, to encourage the use of courtroom technology, to diminish the cost to litigates of obtaining their own courtroom technology, and to avoid the unsightly and potentially unsafe need to wire courtrooms for one-time uses of outside technology. When multiple parties seek to bring their own courtroom technology into a courtroom or hearing room, they frequently create difficulties for the court inasmuch as the

parties need time to install the equipment which with its wiring may adversely affect the appearance and the operation of the court room. Multiple versions of the same technology substantially complicate the situation and ought to be avoided to the degree possible.

From the client's perspective, sharing courtroom technology may permit a substantial cost savings. Current practice often has counsel presenting their case primarily via the use of one or more notebook computers. Well designed courtroom technology would permit the use of multiple computers either all concurrently attached to a display system or seriatim. In no case should counsel need to share computers with the associated concern about improper access by one party to confidential matters of another.

Although technology sharing may be highly desirable and ought to be strongly encouraged, there would appear to be no justification for requiring one party that has obtained courtroom technology at its own expense to make that technology available to other parties of no expense to those parties. Doing so would be unfair and would discourage the responsible use of courtroom technology.

§ 2-22.00 *In criminal cases*

In criminal cases, courtroom technology used by the prosecution at a trial or during a hearing should be available for the use of indigent defendants or for those defendants the Court determines ought to have such access for financial reasons.

Commentary

Criminal cases are special. The constitutional requirements for due process and fair trials make an uneven playing field especially unacceptable. Accordingly, prosecution use of courtroom technology ought to permit the Court to order the prosecution to make the technology available to an indigent defendant. The Protocol does not require that the prosecution operate the technology or instruct the defense in its use, only that the given technology be made available for defense operation.

Although there is substantial agreement that indigent defendants and their counsel should have access to prosecution technology, the matter is far less clear for defendants who can afford to retain counsel. From one perspective, courtroom technology is simply another defense expense. From the other, there is little justification for burdening the defense with yet another cost (which might make it choose to refrain from acquisition of courtroom technology) which the defendant may not be able to afford. The Protocol allows the Court to take the defendant's financial status into account in deciding whether to allow the defense access to prosecution supplied courtroom technology.

§ 2-30.00 *Notice of intent to use technology*

Unless otherwise governed by Court rule or practice, counsel intending to use courtroom technology in a given trial or hearing should give notice of that intent in writing to the Court and opposing counsel a reasonable time before the trial or hearing. The notice should include an itemized list of the technology that counsel desire to use and any special requirements dictated by its installation or operation, should it be courtroom technology to be supplied by counsel.

Commentary

Although the Court ought to have either a rule or standing order setting forth intended courtroom technology use by parties, in the absence of such a formal Court requirement, as officers of the court counsel should take it upon themselves to advise the Court, and opposing counsel, with specificity, of their intent to use courtroom technology. Such advance notice will permit the Court sua sponte to schedule a hearing to discuss the matter should it find counsels' plans to be problematical. Ordinarily such notice should be filed in the form of a motion.

§ 2-40.00 Coordination with the Court's technical staff

Subject to Court rule or practice, counsel intending to use courtroom technology at a given trial or hearing should coordinate the planned use with appropriate Court legal technologists a reasonable time before the trial or hearing. Court staff will not assist counsel in their case-specific adversarial efforts.

To the degree possible, when using Court owned or controlled courtroom technology counsel should test any counsel supplied courtroom technology that must connect to the Court's technology a reasonable time before the trial or hearing to ensure the compatibility of the technology.

Commentary

An increasing number of courts employ legal technologists to assist the Court in the management and use of courtroom technology. These experts usually can speak with technological authority about the compatibility of proposed counsel technology with the Court's own systems and rules. Subject to the Court's preferences, direct technical communication between counsel and the Court's technologists can be very helpful to obviate otherwise potentially significant technical problems. Check lists prepared by the technical staff may be an appropriate way of assisting counsel and those employed by counsel in this general area.

Counsel should ensure, however, that they do not confuse the technical role of the Court's legal technologists with the distinct roles of judge and court administrator. Counsel should further understand that the Court's technologists are not to assist counsel in counsels' attempt to win their case, but rather are neutral experts whose job it is to ensure that counsel can function properly within the technological constraints of the given courtroom or hearing room.

Because given pieces of equipment, notably some notebook computers and some display devices, are not always compatible, it is essential that counsel field test their equipment a reasonable time before the trial or hearing to ensure compatibility. A "reasonable time" is sufficient time to either correct the incompatibility or to obtain alternative compatible equipment. Ordinarily this requires a compatibility test one or more days in advance of the trial or hearing.

§ 3 A Court's Duties to Counsel

§ 3-10.00 Duty to supply courtroom technology

A court has no duty to supply counsel with courtroom technology.

Commentary

Courtroom technology can substantially decrease trial or hearing time, augment fact-finder memory and understanding, and provide the public with an enhanced understanding of the proceedings. Although these are substantial and desirable matters, no legal authority now exists which compels a court to supply counsel with publicly (Court) financed courtroom technology as a general matter.

§ 3-20.00 Duty to provide information to potential counsel

§ 3-21.00 *In general*

The Court should supply counsel who are to appear before the Court in trials or with any appropriate information that reasonably could affect counsels' potential use of courtroom technology.

Commentary

Courts ought to give counsel sufficient advance notice of Court policies concerning the potential use of courtroom technology in the Court's trials or hearings so as to permit counsel the opportunity to make intelligent and reasonable decisions about whether counsel should use courtroom technology and if so in what manner. Mandatory courts have a special responsibility to advise counsel as far in advance of a relevant trial or hearing of the Court's mandates concerning such use.

§ 3-22.00 *Court rules or procedures*

§ 3-22.10 *In general*

The Court should establish and promulgate in appropriate written and electronic form detailed rules or practices concerning the use of courtroom technology trials or hearings before the Court. The Court should in particular set forth any types of courtroom technology that are expressly prohibited or permitted.

The Court should publish for the Bar its position on who is expected or required to operate the courtroom technology. This may include specific notice that third-party vendors or support are welcome, that courtroom space has been dedicated to the potential operation of equipment by such third parties, or similar rules. If the court has constrained operation to certain categories of individuals or created a training requirement or certification process, this should be included.

The Court should notify counsel clearly as to any costs that are involved in the use or operation of courtroom technology, whether the Court's own or controlled technology or that obtained by counsel.

The Court in jury trials should issue such instructions as may be necessitated by the use of courtroom technology.

Commentary

The use of courtroom technology in trials and hearings is increasingly common. Use of courtroom technology in trials and hearings has “traditionally” been ad hoc, with specific rules or practices often varying depending upon the judge in any given case. This is systematically undesirable as it provides a potentially great variance in trial practice depending upon the identity of the individual trial judge. If a given court cannot establish rules and practices of general application within the jurisdiction of the Court, the Court should attempt to establish consistent rules for any given courthouse. When such is not feasible or desirable, each individual judge should make known in some written form the judge’s rules and policies. This is especially important in the modern world when counsel may no longer be local. Web-published rules and practices are especially useful.

In determining whether the Court will permit or require the use of certain types of technology, judges, court managers, and technologists should work together to reach an appropriate result. Court technologists should always be consulted in issues dealing with the potential use of technology.

The issue of who is expected to personally operate courtroom technology is especially important, particularly inasmuch as there can be substantial variation in practice. Some courts permit counsel to operate the technology themselves and to present evidence directly. Others require evidence to be submitted to the court’s officers to be displayed by those officers. The court’s culture in this direction should be spelled out clearly.

Courts occasionally have special rules concerning demonstrative evidence, particularly as used in traditional opening statements. If these or similar rules are to be applied to high technology trials requiring, for example, exchange in advance of trial or hearing of computer-based images, such matters should be made clear.

Courtroom technology use can create a need or desirability for jury instructions. Courtroom 21 research, for example, indicates a high probability of jury frustration if counsel show documents too rapidly for jurors to read or obscure significant portions of the documents by what are customarily called “call-outs” (enlargements of key portions of text). Counsel should be encouraged by the court to give the jurors sufficient time to read relevant parts of exhibits. However, particularly if the Court wishes to achieve the maximum time savings that may result from the electronic display of evidence, the Court, in those courts to which such an instruction would be applicable, should instruct jurors that counsel will highlight the parts of exhibit counsel feel most important but that the jurors will later be able to read the entirety of the exhibit during jury deliberations.

§ 3-22.20 *Counsel’s ability depart from the court’s established technology or customs*

In setting forth rules or practices concerning courtroom technology, the Court should include any policies and procedures which may prohibit or permit counsel to seek exceptions to those rules or practices.

Commentary

Technology is ever-changing. Any court rules or practices should include the ability for counsel to petition the court by motion for an exception to its normal rules or practices, if only because of the possibility of technological developments which might justify a departure from rules or practices based upon no longer tenable assumptions. Such new developments are distinct, however, from exceptions based solely on counsel preferences.

A court, especially a court with a substantial technology-augmented courtroom, likely will have firmly established expectations for counsel's actual use and operation of courtroom technology. Counsel, however, may have alternative preferences. When the courtroom has installed multiple small display monitors for jurors, for example, counsel have been known to request permission to bring into the courtroom a large screen and projector to use instead of the small screens. Similarly, when counsel are supplied with a technology-equipped lectern or podium, they often seek consent to either present the case electronically from counsel table or other location (often using an assistant or vendor) or to relocate the lectern or podium for opening statement, closing argument, or both. Such requests can be technologically difficult or impossible, especially if made during or immediately before trial. A court that determines based upon its own experience that given types of requests will be rejected should make that fact clear in its published practices.

§ 3-22.30 Exhibits and court record

When counsel are using courtroom technology, the Court should clearly notify counsel as to the ways in which exhibits will be designated and supplied to the court reporter or other appropriate individual so that all exhibits can be promptly identified for appellate purposes. In particular, if technology is to be used to permit annotation of exhibits, the court should make clear whether each annotation becomes a separate sub exhibit designation.

Commentary

The nature of the court record is evolving along with the use of courtroom technology. As we now have the ability to annotate exhibits electronically, whether for reference later in trial or hearing or for the appellate record, the Court should advise counsel and the court reporter of how to deal with annotations and related material. This may become a moot point as courts move to electronically capture the entire presentation of evidence.

§ 3-30.00 Orientation and familiarization

The Court should make known to those lawyers who may appear as counsel in a trial or hearing before it the nature of any courtroom technology installed in its courtrooms and hearing rooms, and any technology owned or controlled by the Court that may be available for counsel's use. The Court should periodically provide counsel an opportunity to physically view and inspect the court's courtroom technology and should make available to counsel court staff able to answer reasonable non-case theory specific inquiries from counsel concerning use or operation of the courtroom technology. Court staff must not engage in what is customarily considered adversarial case theory specific litigation support advice.

Commentary

In the interests of both encouraging courtroom technology use and minimizing waste of court time, a Court should make known to counsel as much information about Court owned or

controlled courtroom technology as may be reasonably possible. This may include placing information, including photographs and possibly even operating instructions, on the Court's web site, production of orientation videotapes, CD's or DVD's, and publication of written materials.

Experience has shown us that counsel who will participate in trials or hearings before the Court can be greatly assisted in their decisions on whether and how to use courtroom technology if the Court periodically opens its courtrooms to counsel for a basic courtroom technology orientation and familiarization session at which the Court's legal technologists can answer specific questions not involving a counsel's efforts to prove the specific facts of his or her case. Because the Court must at all times be impartial it is imperative that in their efforts to be helpful court staff do not accidentally or otherwise advise counsel on how better to employ courtroom technology to achieve case specific adversarial goals.

§ 3-40.00 Training of counsel

The Court is not responsible for training counsel in the adversarial use of courtroom technology. This ordinarily is the responsibility of counsel and the Bar. Pursuant to its efforts to encourage efficient use of courtroom technology, the Court may support training of the Bar in the use of courtroom technology to include making its courtrooms and courtroom technology available for use in training.

Commentary

Training counsel in trial advocacy is a traditional role of the Bar, albeit one in which judges have frequently assisted in one proper form or another. Trial advocacy instruction carries with it a possibility of judges accidentally being placed in an ex parte role if counsel with active cases before the judges participate in the training. Further, most courts have sufficient financial and personnel resource constraints to suggest that they themselves should be reluctant to offer counsel extensive technology-augmented trial advocacy instruction. Courts, however, have a long recognized interest in encouraging ethical and professional trial practice. Consequently the Court may wish to assist the efforts of the Bar or third party providers of courtroom technology-augmented trial advocacy instruction. Although this may be done in many ways, one especially effective mechanism may be to permit such instruction to take place in the Court's own courtrooms with the assistance of the Court's legal technologists. This has the advantage of furthering the ability of the local Bar to efficiently use the Court's own technology.

§ 4 Technical Problems

§ 4-10.00 Counsel responsibilities

It is counsel's responsibility and not the Court's to present counsel's case. When counsel experience a technical problem while using or attempting to use courtroom technology, it is counsel who have the primary responsibility to resolve the problem or to proceed promptly without the use of the problematical technology. This applies equally to the use of Court owned or controlled technology and that supplied by counsel.

Pursuant to their duty of competence, counsel should make every reasonable effort to ensure that counsel will not suffer a technical problem while using courtroom technology in a trial or hearing.

It is improper for counsel to intentionally create a technical problem or to simulate the existence of one to curry favor with a fact finder or to prepare a fact finder for the possibility of a later, real, technical difficulty.

To the degree possible, counsel should have backup technology or traditional, non-technological means, ready to ensure that the trial or hearing can proceed should a courtroom technology technical problem take place that cannot be resolved in a timely fashion.

§ 4-20.00 Court responsibilities

The Court should make every reasonable effort to ensure that Court owned or controlled technology, to include any infrastructure wiring and control systems, is fully functional for a trial or hearing in which it is scheduled to be used by counsel. Should a known problem exist with the Court's courtroom technology, whether consistent or intermittent, appropriate court staff should so advise the judge and appropriate court managers who should as administratively appropriate notify counsel of the problem and any alternative solutions as may be available.

When counsel experience a perceived courtroom technology technical problem that may delay counsel's presentation counsel should give timely notice to the Court and advise the Court, if possible, of the estimated time necessary to resolve the difficulty. The Court should give counsel a reasonable amount of time to attempt to resolve counsel's problem, subject to the demands of the case and the number and type of problems, if any, previously encountered.

Technical difficulties encountered by counsel in using Court owned or controlled courtroom technology, especially if the Court is a mandatory one, may justify the Court in exercising its discretion to provide counsel with more time with which to attempt to resolve a problem than would otherwise be provided.

The Court may but need not provide court staff to assist counsel in an effort to resolve an apparent technical problem.

In a jury trial, the Court may wish to instruct the jurors as to the existence of a technical problem and its consequences along with whatever curative instruction the Court may believe is appropriate.

Commentary

Technical problems incident to the use of courtroom technology have proven troublesome. The difficulty is compounded by the fact that it often is very hard to adequately diagnose the problem which can be a result of operator error, software or hardware misuse or incompatibility, infrastructure failure, or device error or failure. A judge faced with an apparent problem has no immediate way of knowing whether the problem is in fact real or just an easily-resolved operator mistake, or whether there may be, for example, a major systemic failure in the Court's own technology. Limited technically able court staff further complicate the judge's ability to determine how best to proceed.

Court technologists should keep court managers and judges advised of potential problems known or expected in the area of the use of the Court's owned or controlled technology or courtroom technology that will be used by counsel.

The collective experience has thus been that if a brief amount of time is not sufficient to resolve the problem the trial or hearing must continue, even if that means that the technology is

unavailable. Notably this may not be possible in the event of some forms of technology error. A failure in videoconferencing equipment during remote witness testimony may make it impossible to obtain that testimony that day, and alternative witnesses may not then be available in the courtroom. In a mandatory court in which counsel are using electronic presentation of electronic documents because it was either inefficient or difficult to use the physical documents (if they exist), a technology failure may shut the case down as the physical documents may be unavailable.

There has been some feeling that if a problem is encountered in using the Court's own technology when counsel has been required to use that technology, the Court should be more sympathetic to counsel. In short, a mandatory court may have a higher obligation to counsel than does a permissive court. There is no strong agreement on this, however, and the text provides for that possibility only.

The Protocols consequently place the burden of coping with a technical problem on counsel rather than the Court. This is at least arguably unfair to counsel, at least in cases involving failures of Court equipment. There does not appear to be a meaningful alternative to this at present, however. Accordingly, counsel should have an extensive range of backup options available. Counsel should keep in mind while contingency planning that often courtroom technology permits alternative ways of proceeding. If counsel's computer should fail, for example, but counsel has paper documents and an available document camera, trial can continue using the document camera.

There have been reports that some counsel who fear the possibility of encountering technical problems later in a case simulate such failures at opportune moments reasoning that this will prepare the jury for a more serious, real, failure if one should occur, and may well curry sympathy in jurors. This is improper and is a form of fraud on the court.

Judges faced with courtroom technology problems in jury trials may wish to issue curative instructions. Some judges may wish to give a general instruction as part of the prefatory instructions.

§ 5 Pro se litigation matters [reserved]

§ 6 Citation form

These Protocols may be cited as, "Ctrm 21 Ct. Affiliate Protocols __ (Working draft March 14, 2004).