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Does Virtual Reality Belong in the Courtroom?

Ben Hancock, The Litigation Daily

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Here's a confession: I'm probably one of the few people in Silicon Valley who's not all that amped about virtual reality. Market researchers would probably guess otherwise. I'm a guy, for one, plus I grew up in the 80s and 90s. I spent my fair share of time melting brain cells playing games like Doom.

I'll admit that a part of me geeks out at the idea of spending an afternoon virtually shooting down alien spacecraft. But dystopian visions of VR—like that awful Bruce Willis movie “Surrogates,” or that [photo](#) of Mark Zuckerberg walking past a sea of people oblivious to their surroundings—give me pause.

As with any technology, though, VR's value (and effect on humanity) will depend on how it's used. And bringing it into a courtroom is not something I would have thought up.

Marc Lamber and James Goodnow, personal injury attorneys with Fennemore Craig in Arizona, have been working with digital media agency Kitchen Sink Studios to explore how VR could be used to recreate accident scenes. The idea is that by putting jurors in the seat of the car in the moment of a crash, for example, they could better understand the sequence of events, and who is at fault.

Litigation has changed in this space a lot already, the two said in a recent phone interview. From still pictures and diagrams to computer-animated videos, the attorneys have tried a variety of methods to create convincing stories about how accidents unfold. VR, they posit, is the logical next step.

“The questions that are being asked [by jurors] are three-dimensional questions,” said Lamber. Virtual reality gives them the first opportunity to actually answer in all three.

They're not the only ones to see the potential role for VR in the justice system. In Germany, authorities have [developed a 3D model](#) of the Auschwitz concentration camp, where more than a million people were murdered by the Nazis, to aid in proceedings that are still ongoing against those suspected of having a role in the killings. The technology has allowed insight into whether guards, from where they stood, could see the gas chambers or the crematoria where bodies were burned.

The applications for VR seem vast in U.S. courts as well, from criminal cases to real estate disputes. But so far they are untested. Goodnow and Lamber say they have played with 3D models in some of the vehicular accident cases they are working on, but haven't sought to introduce them into evidence yet. The sight of a jury box full of people bedecked in Oculus Rift headsets may still be a ways off.

There's a good reason for courts to think carefully about the ramifications of VR. Goodnow and Lamber acknowledge that part of what they are after is VR's “shock and awe” value. It would certainly help jurors to pay attention, or at least not fall asleep. But will the images they see—created with the influence of lawyers and paid experts—really get a jury closer to the truth?

“There’s a concern that by creating these worlds, the juries will take it as gospel,” said Goodnow. “I think that’s a fair concern, but the response to that is that the legal system is an adversarial one. And it’s premised on one party presenting its case and the other side coming in and attacking it.”

Lamber puts it another way: “We were always taught, if you bring a toy to trial, the other side can use that toy, too.” He acknowledges that attorneys would have to be scrupulous about their modeling in order to avoid having opposing counsel come in and rip apart their credibility by showing evidence that it was missing pieces. “We can’t just leave out a light pole,” he said.

It’s not exactly clear how the pair would deploy VR in the courtroom. But what they envision is being able to show jurors an accident scene from a variety of vantage points. If the case involved a pedestrian being struck by a car, for example, the VR might be able to show with life-like realism what was visible to the driver, and what the pedestrian saw before stepping into the street.

The problem of perspective is one that has [posed a challenge](#) for plaintiffs in civil rights cases against police over alleged excessive force, even when there’s video evidence. Surely, being able to “walk” around the scene of an incident would improve that. But when key facts are disputed, would the “reality” that jurors see end up being more virtual than actual?

The other major challenge is cost. A Rift headset isn’t cheap. But what really runs up the bill is scanning a scene and having experts verify and measure everything in order to create a meticulously accurate model. According to Lamber and Goodnow, that can easily run up into the six-figures—blowing up litigation expenses to beyond what the case might be worth.

That will surely come down as the technology develops. Enterprising media companies like The New York Times have figured out how to bring VR to the masses, using cardboard boxes with lenses and smartphones, plus some fancy photography equipment.

Even a skeptic can see the value in exposing people to a fundamentally unfamiliar perspective, and bringing them into the scene. But I’m not sold yet on whether VR can offer better outcomes or will just make the courts a more confusing place for the public.

“It’s always going to be from your perspective and we’re choosing to use it because we think it’s going to be helpful to our end of the case,” said Lamber. He added: “We think it’s pretty objective.”

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