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The Rockville Superior Court judge who will be asked to decide Halloran & Sage attorney N. Kane Bennett's motion for summary judgment in *Johnson v. Indar Stairs*.<

Embedded in the e-brief that Bennett filed in support of his motion last November are hyperlinks to all the exhibits in the case, including video depositions. When the judge clicks on the hyperlink, the targeted portion of the videotape will pop up on the screen and will play both the audio and visual portion of the deposition referred to in Bennett's argument.

It's a first of its kind in Connecticut, according to Bennett and Marie Mullaney, owner of Litigation Solutions in South Windsor, which created the unique e-brief. Although Bennett, a digital technology aficionado, has seen e-briefs with hyperlinks to case law or other print documents, his is the first in the state to link to the actual video deposition, the Halloran & Sage attorney said.

The firm represents the defendant employer, Willimantic-based Indar Stairs, in a workers' compensation

tort suit; the videotaped deponent, Barry Johnson, is the plaintiff whose finger was cut off by a table saw. "He's not my client, so if I could use his own testimony to make my case, that would be effective," Bennett explained.

To be able to recover from the employer, instead of being limited to workers' compensation, the injured employee needs to prove intentional injury, essentially that he was coerced into injuring himself, Bennett said. In the deposition, the plaintiff admitted not only that the injury was "a freak accident," but that he had used the table saw in the same way for five years under two different employers, according to Bennett. "The employee's words were my strongest argument," he said.

Although both Bennett and Mullaney declined to disclose the cost of the project, Mullaney said the ball-park figure was about \$75 per page. "It's not out of the realm of regular cases," Bennett confirmed.

Bennett's unusual PDF file earned his opponent, Hartford attorney Paul Levin, an extension of his deadline for response. Levin said he probably won't object to Bennett's novel use of digital technology, acknowledging that it was "impressive."

Bennett's "connoisseurship" of visual technology is exactly what Quinnipiac University School of Law professor Neal Feigenson has in mind when he teaches his course on visual persuasion with artist Christina Spiesel, an adjunct professor at both Quinnipiac and New York Law School. "Many lawyers know the technology is out there, but they don't have the breadth or depth of visual intelligence necessary to use it well," Feigenson explained at a recent seminar.

Learning to make an effective visual argument is as essential to a legal education today as learning to make an effective verbal argument, Feigenson said.

Last month's decision by the Connecticut Supreme Court in *State v. Michael Skakel* confirmed there are few limits on either courts' discretion to admit digital evidence or attorneys' use of such evidence as powerful rhetorical tools.

In his closing statement to the jury, Fairfield County State's Attorney Jonathan Benedict accompanied his verbal argument with a chilling multimedia audio/visual display that juxtaposed Skakel's voice describing his feeling of panic the morning after the killing with a photo of the victim's beaten body. Many observers considered that presentation, combined with Benedict's verbal rhetoric, to be the most extraordinarily effective piece of advocacy in the trial, clinching the state's victory.

Yet the state's high court, when confronted with an appellate challenge to this extraordinarily powerful visual display, seemed to find it almost unassailable. The court relied on the wide leeway given to attorneys in closing argument and confirmed trial courts' broad discretion in admitting digital evidence.

To Feigenson, the court's generalized scrutiny of the Skakel trial's most provocative element demonstrated that "neither the trial nor the appellate courts have fully engaged with the tremendous rhetoric complexity of multimedia shows and argument," he said.

"When the video comes on, everyone forgets to object," a Connecticut Superior Court judge told Spiesel a few years ago.

The problem is defining "what is unfairly prejudicial in this area," said Derek Mogck, a complex business litigation attorney at Shipman & Goodwin's Hartford office. Mogck, who has written widely on use of digital evidence and teaches trial practice at the University of Connecticut School of Law, said attorneys should approach digital evidence with the same basic set of tools used to challenge more traditional evidence. •