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## Technology & Mediation

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WAMS Mediator  
since 1989

### INSIDE THIS ISSUE

Article 1: Technology & Mediation	1
Focus: WAMS Technology	2
Article 1 continued	3
Article 1 continued	4

Mediation has always been about communication. The parties exchange their respective points of view through the mediator and present evidence supporting their positions in a highly focused and time constrained setting. Today, thanks to technology, the ability to “communicate” in this fashion has never been better.

In the last few years, the evolution of devices used for everyday communication has been astounding. Whether text messaging or emailing on cell phones, the advanced features of “smart phones” and other devices have changed our ability to communicate over great distances in real time with a multitude of resources.

With the advent of mobile devices, information has never been more readily accessible. Nowadays, when a bored mediation client ponders who wrote the poem, “*Oh Captain, My Captain*” (as used by Robin Williams in “*Dead Poets Society*”), the answer is just a Google search away. In seconds, Google and Wikipedia can provide the name of the poet (Walt Whitman), the theme of the poem (metaphorical eulogy of Abraham Lincoln) and additional trivia, including the complete lyrics, life and times of the author or details about the Robin Williams movie (including box office gross). Just as we used to say, “I’ll get a Xerox of that”, now we just “Google it.”

Whether in a restaurant, on a bus or in a mediation caucus room, the answers to such obscure questions are now as close as the nearest tech device.

**Tools of the Trade.** When I first began as a mediator some 23 years ago, the “tools of the trade” in mediation consisted of loads of paper. The Plaintiff’s group would bring its banker’s box full of medical records, pleadings, reports and pictures. Likewise, the defense attorneys and insurance representatives came loaded down with “the claim file,” containing their copies of medical records, billing statements, treatment calendars, deposition transcripts, expert reports and every other potentially needed document. Of course, there was a huge amount of duplication between the two groups, but each side needed to be prepared to access some part of this sea of paperwork to address the issues that could come up at the mediation. I can’t even guess at the number of binders and pages of documents I’ve received, then recycled or shredded, over my career as a mediator.

Now when I enter a caucus room, I’m likely to see participants with one or more laptop, smart phone and iPad. These are now viewed as essential tools in mediation. Mediators and parties who are slow to adapt to the use of these new resources in mediation are in danger of being left behind.

*...Continued on Page 3*

## Focus: WAMS Technology

By: WAMS Staff

**Website:** The WAMS website is a great resource for our clients. It offers a plethora of information about mediator bios, fee schedules, mediation and arbitration rules, useful links and contact information. The most popular feature, however, is our online calendar for short notice scheduling. This feature allows clients to see mediator availability for the next two weeks. As a reminder, there is no cancellation fee when you schedule a hearing within 2 weeks of the hearing date and need to cancel for any reason.

**Mobile Website:** Created in 2010, the WAMS Mobile Website provides users with a streamlined experience for viewing content from the WAMS website.

To view the mobile site from your **Iphone**, go to [www.usamwa.com](http://www.usamwa.com) in the internet browser. In the left hand column, select the link to view the WAMS mobile site. To save the mobile site as an application (app) to your phone, click on the forwarding arrow of your internet browser bar, and select "Add to Home Screen". From your **Droid's** internet browser, follow the same directions above to the mobile site. To save the mobile site as an application (app) to your phone, long press your home screen, go to shortcuts and bookmark the page. From your **Blackberry** internet browser, follow the same directions to access the mobile site. To save it as an application (app) to your phone, press on the Menu button and select "Add to Home Screen."



**Email:** WAMS Case Administrators utilize email in a variety of ways to help the scheduling process run smoothly and efficiently for our clients. Not only do we use email to coordinate scheduling, but we do the following as well:

- Email referral templates for case information when a new case is being submitted.
- Email calendar availability quickly.
- Email confirmation documents to the parties once a hearing is set. We've found this to not only be "green", but preferred by clients who can then forward the information to their respective clients and reduce the time and expense of typical mailing.

**Submissions:** With most attorneys now using email, WAMS encourages submitting mediation materials via email. Mediators prefer that materials submitted electronically be limited to 10 pages, so they are not required to print lengthy documents. Attorneys usually submit mediation briefs via email referencing their exhibits, then bring the actual exhibits to the mediation. Don Kelley prefers all submissions in electronic format, as he carries his iPad during mediations and references materials online as needed.

WAMS now sends invoices almost exclusively in electronic format. WAMS Arbitration Rules permit Electronic Filing of submissions subject to a 10 page limit without prior authorization. All submissions over 10 pages (inclusive of exhibits) must be submitted in hard copy. The Witness/Exhibit list is often less than 10 pages. The arbitration Award is provided in electronic format via email to counsel unless otherwise requested. WAMS continues to evolve with technology, but has not yet embraced e-filing in arbitration.

## *Technology and Mediation (Continued from page 1)*

Let's take a look at some of these devices and how they can be used to great advantage in mediation, whether by the mediator or by the participants. I'll focus on the use of my two favorites, the iPad and the smart phone. Of course, WAMS provides free wi-fi access to accommodate such devices during its proceedings.

**iPad.** This handy device from Apple (and its cousins produced by a number of competitors) is not a personal computer. But it certainly is well suited to handling an immense variety of tasks for the mediation client. Because it doesn't have a hard drive or complex software of a personal computer, it effortlessly processes information for easy viewing, boots up quickly, and (almost) never crashes or freezes.

Over 75% of the materials submitted to me as a mediator are now sent electronically (and I love it!!) Typically, mediation materials now arrive by e-mail to the WAMS mailbox and are logged in (for delivery receipt purposes) then forwarded within minutes to my e-mail account. I then transfer the submissions to one of my iPad applications and I'm good to go. No more printing of hundreds of pages of documents, no more waiting for deliveries by legal messengers and no more heavy briefcases full of submissions to carry back and forth between the office and mediation venue. Documents can even be printed wirelessly as needed.

**E-mail, calendaring, and contact information** is right at the user's fingertips at all times and can be easily updated and automatically synchronized with the home or office computer. Mediators and counsel can continue their negotiations electronically, if necessary, after the mediation session is concluded. It is much easier to keep track of ongoing discussions that may extend over many months if there's an email trail to follow.

**Documents of all kinds** can be transferred electronically to the iPad and then viewed, scrolled

through, highlighted or zoomed in or out without the need for a mouse.

**Photos** are easy to view on an iPad (with great resolution) and can be manipulated to zoom in to demonstrate particular points of interest.

**Web-based content** is readily accessible using the iPad browser. Examples I have recently used include WebMD descriptions of medical conditions, court decisions, sample pattern jury instructions, maps, graphs and other illustrative materials.

**Native applications (Apps)** number in the thousands. These are typically developed by third parties to simplify access to specialized information by creating user-friendly screens with intuitive radio buttons and other guides to help the user move through the available resources. They are easily downloaded to the iPad (or smart phone in some cases) in a matter of seconds, and are generally free or available for very low cost (2-10 dollars). I regularly use two anatomical Apps (*Spine Decide* and *Skeletal 3D*) to help parties understand and see the parts of the body being described in the medical records. Now, when a doctor describes a spondylolisthesis in a medical record, I can show the parties detailed (even animated) anatomical drawings, medical definitions, symptoms, treatment, etc. – just like on the Discovery Channel! My colleague Larry Levy at WAMS has recently discovered the *Picture It Settled* application developed by a mediator for use by mediation clients to track their negotiations.

**iPhones, Droid Phones and other Smart Phones.** Smart phones have become so much more popular with our mediation clients in recent years because they are so versatile.

The #1 use of a smart phone at mediation is still clearly e-mail. Participants at mediation are able to keep in touch with their offices or key participants who otherwise are not in attendance.

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In a recent mediation, one participant was able to get an immediate e-mail clarification from an expert witness to an issue that was being discussed based on his written report. Defense attorneys use e-mail, rather than voice connections, to communicate with their out-of-state insurance representatives. While this may sound less satisfactory, often the opposite is true, as e-mail commentary is faster and more efficient than "phone tag".

**Video Conferencing.** This is not yet common in mediation, but is certainly on the immediate horizon. More than half of the smart phones (and iPad) sold today are capable of two-way video conferencing. With both forward and rear-facing cameras, there is no reason why key parties cannot "participate" meaningfully in mediation regardless of physical distance. WAMS offices in Seattle and Tacoma are equipped to provide video conferencing (via Skype) for parties who request that capability.

**Social Networking.** The implications of social networking throughout our society have been nothing short of a phenomenon. Since Facebook can be easily accessed via various mobile devices, it is very topical at some mediations. I find that each side has looked to see what information has been publically displayed by the parties to a lawsuit and by their witnesses, including experts and lay witnesses.

**Conclusions.** What conclusions can we draw from this influx of new technologies into the mediation process? Well, here are a few thoughts:

- Mobile devices can be infinitely more efficient than paper.
- Mobile technology is here to stay and getting better.
- Allows multi-tasking, making mediation more attractive for participants to attend without forsaking access to other matters.
- Professionals who are slow to adapt to these new technologies will be left behind.



Pat Duffy

"As usual, you did an outstanding job. You have a unique talent for putting both clients and lawyers at ease while continuing to keep the pace of the mediation moving forward and avoiding log jams."

-WAMS client

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