

TRIAL

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Boost your case with litigation support software

This kind of computer program can help you organize discovery and testimony, keep track of your comments and analyses as you prepare for trial, and share information with others working on the case.

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Litigation support software organizes large amounts of information to help you build a winning case. These programs allow you to prepare your case by searching, arranging, and outlining the evidence.

They help you keep abreast of the latest developments and incoming discovery; communicate with members of your litigation team about recent observations, analyses, and events; and share case information with various people in different locations. By allowing you to digitize case information and store it in your laptop, litigation support programs can also free you from carting around boxes of paper.

There are several litigation support products on the market, including Windows-based programs (for example, Summation iBlaze) and Web-based programs (for example, WebBlaze and CaseVault).¹ I use Summation iBlaze to organize discovery and couple it with trial presentation software such as TrialDirector to deliver a powerful case to a jury.²

All attorneys are not created equal, nor are all litigation support programs. When assessing various programs to determine which is best for your practice, ask whether they include the following basic elements.

Realtime technology. Realtime allows you to instantly view, search, and annotate live testimony on a laptop computer, at both depositions and trial.

Realtime lets you read back a witness's answer right away, rather than relying on the court reporter to repeat the testimony. This is particularly helpful when an expert has given a long and complex answer; there is an objection and dispute over the form of a question, or you are trying to elicit the perfect answer from the witness to support your motion for summary judgment. At any time during the deposition or trial, you can search the transcript to find specific, helpful testimony.

Rather than writing notes about the testimony on your legal pad (and thereby tipping off opposing counsel that you consider it relevant), you can quickly flag key testimony by hitting your computer's space bar. The software program creates the equivalent of an electronic sticky note in the transcript, which you can fill in later with your thoughts and issues. Your eyes never have to leave the witness.

After the proceeding is over, you walk away with a draft of the transcript on your laptop. That can be especially handy when you are deposing one witness over several days. You

can update the draft later with the final, certified copy of the transcript, keeping your notes intact.

To use realtime, you will need a laptop computer loaded with software that has a realtime component, a court reporter who writes realtime (be sure to ask for one when scheduling the deposition), and a way of connecting your laptop to the equipment used by the court reporter, who should provide the necessary cables. In some states you are required to give your opposition notice of realtime use, so check your state rules when scheduling a realtime deposition.

Transcript management. Even if you

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don't use realtime at a deposition, you can still transfer transcripts into a litigation support program electronically as American Standard Code for Information Interchange (ASCII) text, which the court reporter supplies on a disc. The integrity of the hard copy remains intact, including the transcript's line numbers.

Obtaining electronic transcripts and managing them in a litigation support program has many advantages. You can search the transcript of one witness, or all of them, for a particular word or phrase. You can flag relevant testimony with notes for follow-up or analysis.

One key to effective case organization is to develop a list of important issues. Any note you create in a transcript can be searched, printed, and tagged with an issue so that the program can organize notes by issue. A good litigation support program should offer several methods for digesting transcripts, far faster than the traditional methods of summarizing testimony.

It is helpful to organize witnesses' transcripts according to their status in a case. I create separate folders for expert witnesses, lay witnesses, and litigants. Organizing the testimony this way lets me quickly find what I need.

A new type of transcript format with hyperlinks to exhibits has become popular. This format allows instant side-by-side review of a transcript. Your litigation support software will give a specific format and name to

the "bundled" file of transcript and exhibits.

For example, bundled files of transcripts, exhibits, and videos for use in Summation software are called Summation Briefcase Format (SBF) files. When the court reporter creates an SBF file and exports it to your Summation software (Version 2.5 or above), you can immediately view exhibits from within the transcript. The exhibits are automatically loaded into Summation's core database for immediate searching and further annotation. Summation also lets the litigation team create additional links once the transcript is loaded into the program. Other programs offer transcript and exhibit bundling, but not

all of them have a database for storing and searching the exhibits.

Document database. A document database is invaluable, especially when you need to find a particular case document quickly. This database is a collection of summaries or abstracts of important case documents. Each summary record corresponds to a single document and contains fields for objective information (for example, document date, type, and authors) and subjective information (for example, legal issues, attorney comments, and "hot" designations).

This information must be entered into the database by the attorney or a staff member, or the task may be outsourced to a service bureau that specializes in handling litigation documents. Creating a document summary database yourself is very time consuming.

In addition to using the coded information about a document that's been entered into the summary records, you can also scan a document in order to view its contents as an image—like a cyberphotocopy. TIF and PDF

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are popular formats for storing images of a letter, a memorandum, a photograph, or just about anything. By scanning documents as images, you can essentially carry boxes and boxes of paper with you on your laptop.

Load documents provided by your client or produced in discovery into a database so you can quickly search, retrieve, and view them to decide what's relevant to your case, meet document production requests, or use them to impeach a witness at trial. You can search according to specific criteria (for example, all letters that John Smith wrote within a certain date range).

With a chronology-of-events feature, you can use your litigation support software as soon as you open a new case, even before discovery commences.

Once a document is scanned as an image, you can use optical character recognition (OCR) software to turn pictures of words (the document image) into searchable text. The accuracy of OCR conversion varies depending on the document type; for example, a handwritten letter probably won't convert accurately. It may not be necessary to create detailed document summaries for all documents, because documents that seem less significant can be converted to OCR text and searched. OCR costs vary, but can be 25 cents extra per page. Deciding whether to apply OCR to a document depends on the value of the case and the graphic quality of the document images.

Electronic evidence

Given the increased use of electronic records, it is not surprising that electronic evidence is beginning to dominate discovery. Electronic evidence refers to documents or e-mails in their native file format—for example, a Word document is a .doc file and an Excel spreadsheet is an .xls file. Native files include embedded metadata (data about data) that can indicate when a file was created, modified, and saved—or when an e-mail was read, who received a “blind” copy, and so on.

In the past year, both federal and state courts have grappled with how to handle electronic evidence in litigation. Several states have revised their rules of civil procedure to include electronic evidence as a medium distinct from paper. The federal Committee on Rules of Practice and Proce-

dures is seeking comments regarding proposed new rules governing electronic discovery.³ Even if you don't handle electronic evidence now, you probably will in the next few years, so you need to be able to archive and search it.

Various software programs handle electronic evidence; how they do it appears to be the biggest disparity among them. To choose the right one, consider:

- Can the product store electronic evidence?
- If so, what file types can it handle?
- How many and what fields of metadata

are captured when loading electronic evidence into the program?

- Are e-mail attachments automatically captured?
- Will you need to hire an outside service to load electronic evidence into the product, or is it something you can do in-house?
- Are there features that will allow you to produce electronic evidence in its native file format?
- Are there features that will allow you to produce TIF images if you need to redact documents? (The picture created as a TIF image can be redacted, while native file formats cannot be redacted because their data is “live.”)

In many cases, months pass before you receive a single transcript or any document production. Meanwhile you are working up the case, ascertaining what occurred from your client and witnesses, when it happened, and what evidence you will need to obtain to support your client's version of the events.

With a chronology-of-events feature, you can use litigation support software as soon as you open a new case, even before discovery commences. It instantly sorts events chronologically and allows you to rate the impact of the event on your case (for example, whether it is helpful or harmful). You can also add notes—like electronic versions of Post-it notes—to the documents. When discovery finally progresses, you can hyperlink the events to supporting or refuting testimony and case documents.

You look at case evidence collectively, so

get a litigation support product that will perform most of the features discussed above on all evidence types (transcripts, scanned documents, electronic evidence) in one program. Nothing is more frustrating than searching transcripts in one program, having to view documents in another, and creating a chronology of events in a third. Litigation support software should be a central repository for all case information.

How to take it with you

Whether you are in your office, at home, in a hotel, on a plane, in the courtroom, or at your opponent's office, you can carry an entire case with you. Litigation software provides varying degrees of portability, depending on whether it is Windows- or Web-based.

Windows-based software is loaded onto your computer. Web-based software doesn't require a program on your personal computer; you can access your case information from any computer via the Internet with proper permissions (for example, username and password). Web-based software is kept on a server in your office or administered by an application service provider (ASP).⁴ There are advantages and disadvantages to each type.

With Windows-based litigation software, you always have access to your case, even if an Internet connection is unavailable (for example, in the courtroom or your opponent's office, or when a virus has crashed a server).

This software usually has more features than Web-based products do. For example, compare the Outlook program installed on your office computer with Outlook Webmail, which offers only minimal e-mail, calendar, and address book functions. Some Windows-based programs, such as Summation iBlaze, let you connect to your office program over the Internet and download documents to your laptop.

Web-based litigation support lets you share information easily with experts, clients, and those who do not have litigation support software: You simply assign them a username and password so they can log into the program you are using from their offices. You control which information they can access. While some Windows-based programs let you share documents with others who don't have the same program, Web-based programs usually give them a greater range of search and other functions.

To ensure case access at all times, obtain

both types of software and make sure they will communicate with each other. If the Internet is unavailable, you can use the program loaded on your laptop. If you don't have the computer containing the program with you, you can access your case via the Internet. At the very least, install litigation support software on your laptop, preferably a program that will also allow you to dial in to the office and download information.

To enable collaboration on your case within the firm, buy a network license for your Windows-based software. This grants you the right to load it onto the firm's network and attorneys' and paralegals' personal computers, which are linked to the firm's server (or multiple servers) where case information and document images are stored.

For example, a paralegal digesting depositions and an attorney reviewing and marking documents for production both can view the information at the same time. You can establish different security settings for different users. For instance, you can prevent a user from editing information by marking the file as read-only.

When you go on the road for a deposition or meeting, you might take a laptop loaded with litigation support software, case documents, and transcripts. (Because the software is licensed for that particular laptop, it need have only a single-user license.) Your colleagues may continue working on the case in the office. Any changes you make to the case file on your laptop can be synchronized later when you return to the office. You just plug the laptop back into the firm's network.

Working examples

You travel to a deposition in a remote location. You intend to use realtime at the deposition. The opposing counsel sent hundreds of additional documents to your office that arrived after you got on the plane. Because these documents may be pertinent to the deposition the following day, you need to review them that night. Faxing will take too long, cost too

much, and change the document quality.

If you bring your laptop loaded with litigation support software and pertinent case information, you can quickly retrieve any document or other testimony referred to during the deposition. You can also plug into the court reporter's transcription for a realtime feed.

To get the additional documents your opponent produced at the last minute, you can have your staff scan them, either in-house or using an outside company, and load them into the litigation support system. If you have a product that has the capability, you can dial in to the firm's network and download them to your laptop. You can print them on a local printer, such as one at the hotel or a nearby Kinko's. Once you have downloaded the documents, you can search the database or OCR versions to choose the ones relevant to the deposition.

Or, your firm can post the documents using Web-based software for search, review, and local printing. You can log on to the case from a hotel computer, search through the new documents, and print the ones you need.

You are working from home, but you left your laptop in the office. A Web-based program is ideal for this situation, as you can log on to your case from anywhere, anytime. All you need is a high-speed Internet connection and security permissions. Any notes, comments, or outlines you create in the Web-based program can be easily saved and automatically synced with the case information back at the office.

You are going to trial and have boxes of documents that you will need at your fingertips. You scanned the case documents well before trial and built your case using litigation support software, eliminating the need for boxes and a forklift. Once you determine which documents and segments of testimony you will use, prepare them in a trial presentation program that lets you display the items as exhibits. Bring a laptop loaded with both types of software, but first investigate memory requirements and portable storage media.

Your laptop will need 128 megabytes (MB) of memory to run both programs; 512 MB for optimal performance. If you have stored case data on CD-ROMs, floppy discs, or zip discs, make sure that your laptop can handle each media type. You can attach a floppy drive or zip drive to the laptop using its USB or serial port.

Don't rely on a Web-based product at trial. Many jurisdictions are updating their courtrooms to accommodate and encourage technology, but it's happening slowly. Many courtrooms still don't have Internet connections; even if they do, viruses can render the Internet unreliable. A laptop with litigation support software installed is still your best friend at trial.

You need to share selected case documents with a client or expert witness who doesn't have litigation support software. For the client, create a group of documents stored together (called a "Browser Briefcase" in Summation) that you can share over the Internet via e-mail or FTP (file transfer protocol), or on a floppy disc or CD-ROM.

Since you want your expert to be able to search the documents and make comments on them for your review, use a Web-based program such as WebBlaze or CaseVault to post separate groups of documents for the expert to collaborate on using your litigation support system.

You are counsel in a class action or multidistrict litigation. Because some documents are pertinent to all the litigants, the firms involved typically share the cost of hosting these documents where all parties can access them anytime. An ASP is ideal for multiparty, multidistrict litigation because it alleviates the burden of one firm hosting the documents for all parties. Moreover, regardless of which software each firm uses in its own office, the ASP provides a uniform software so all of the parties can access case information over the Web anytime, from anywhere.

You will find other occasions when litigation support software helps you organize your case from start to finish. And the better prepared you are, the better your chances of success at trial. ■

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