

Trial Technology Trumps Black Binders

Today's trial presentation packages help you manage your case.

By Michael Phillips

While the rapidly appearing gray hair may tell otherwise, I do not yet consider myself to be to be a "senior partner." I don't know all the federal judges on a first name basis, and I don't tell stories about how it used to be. I have, however, been around long enough to witness the incredible advances that have been made in the areas of document management and trial presentation. For the last 15 years, my entire practice has consisted of civil litigation, mostly concentrated on complex commercial and environmental litigation where you live or die with documents. I have, therefore, been forced to educate myself, sometimes under fire, about available technology.

Imagine this. You are a first-year associate. The year is 1991, and your firm has just been hired by a Fortune 500 company to take over one of its largest cases from another firm. My assignment was to get the case file and quickly decipher what it contains. I put on my best suit and flew to Dallas to inventory the file.

I was amazed with what I found. Organization of this case had been accomplished by filling a large room with more black binders than I had ever seen in my life. Each binder was



an "issue" in the case. There were also a 100 deposition transcripts: each organized in binders. Needless to say, there was no technology used in that case.

Well, those were the "good old days." Thankfully, we now have technology that can handle and present the incredible amount of data that is a necessary part of complex litigation.

I continue to practice in New Orleans, with Frilot Partridge, www.fpkc.com, a 65-lawyer firm. My practice focuses on complex litigation, including commercial litigation, energy

and environmental litigation and class actions. I represent clients in complex litigation in federal and state courts, as well as many alternative dispute forums throughout the country. I have trial experience in cases with subject matters ranging from violations of federal and state antitrust laws to oilfield and refinery pollution to multi-jurisdictional product liability class actions.

I have found that two technology tools make me more efficient and flexible in handling data, and give me a distinct advantage at trial, especially before a jury. They are CT Summation (www.ctsummation.com) from CT Summation Inc. (Wolters Kluwer) and **TrialDirector** from inData Corp. (www.indatacorp.com).

A single license of Summation is available for around \$1,995, while **TrialDirector** costs \$595. Both, in my view, are invaluable tools for anyone representing clients in litigation.

Let's start with Summation, which helps you to store, manipulate and use considerable amounts of information and if desired, to link the data to images of documents. Setting up the database of information is critical to its effective use.

The old saying of garbage in, garbage out is very applicable. To begin, you must have critical informa-

tion from your documents “coded” into Summation. That is, a person enters into the program key information from each document such as the author, recipient, date, subject, and bates number. Summation also helps you to code documents for key issues in the case. The more information you put in, the more useful Summation can be.

Once the information is entered, the uses for Summation are almost limitless. Here are some of the ways I use it:

Document Review: You can have attorneys or paralegals review documents electronically for production and privilege. The documents can then be printed out or an electronic copy produced in discovery. What I find particularly useful is the ability to search for and organize key information. I can search for documents by fields such as author and date. I can have reports run for all documents regarding key issues. All of this is important when preparing witnesses to testify, or in preparing for discovery of your opponent.

I can take comfort in knowing that after running a search for documents in Summation there will not be anything my witness will see for the first time at deposition or trial.

Deposition Testimony: Summation is equally helpful in handling deposition testimony. It is useful in large cases, because depositions can be entered into Summation along with exhibits. Once entered into the database, you can word search for and bookmark key testimony. I have found this extremely useful when putting together dispositive or evidentiary motions. I bookmark the testimony as the case goes along. It is then as easy as a push of a button to recall the testimony and attach it to motions.

TrialDirector goes hand-in-hand with Summation. It helps you display documents, videotaped depositions, and other images at a trial or hearing. It is easy to use and very effective before juries.

Both of these products played a key role in my recent representation of five companies that were simultaneously sued in 23 class action suits filed in multiple forums throughout the United States — and also investigated

by various Attorneys General — regarding a defective part that had been incorporated into their products. In addition, the companies initiated litigation against the manufacturer of the defective product.

I knew from the beginning that this was going to be an incredibly complex piece of litigation with substantial document management issues arising simultaneously in multiple forums. From day one, I called in a consultant, Docusource Litigation Support Solutions, to set up a system to maintain all the discovery materials. (*Editor's note:* Connie Nichols, co-owner, is a member of the LTN Editorial Advisory Board).

After the class action and AG claims were resolved, we proceeded against the product manufacturer in Civil District Court for the Parish of Orleans, State of Louisiana. See *A.O. Smith et.al. v. Perfection Corp. et.al.*, No. 99-15646.

Using Summation helped us to be better organized, more efficient and more knowledgeable about our case. For example, the task of marshalling discovery materials was amplified by the fact that we were representing five separate companies and had to be certain that we could carry our burden of proof for each client. Using Summation, we were able to organize the documents and show consistent patterns of conduct and communications between each client and the defendant. Very early in the case we were also able to quickly identify key witnesses, some of whom were no longer employed by my clients. We then used Summation to create time lines with documents and testimony. All of this was critical to ensure that the lawyers and the witnesses understood the case as we moved through discovery.

Ultimately, we went to trial against the product manufacturer and presented our evidence using **TrialDirector**. **TrialDirector** was particularly valuable in impeaching defense witnesses where their trial testimony was inconsistent with their deposition testimony or documents that they authored. A key issue in the case was whether the defendant had given notice of a change in product specifications to my clients. At trial, a

vice president of the defendant testified that he had given such notice. On cross examination, we used **TrialDirector** to effectively display evidence such his own deposition testimony, where he testified that such notice had not been given. The witness thereafter admitted to the jury that he had given inconsistent testimony under oath. His credibility was destroyed. This was key to the jury rejecting the defendant's witnesses and awarding my clients the full amount of their demand. While on appeal, the case settled with my clients receiving a multi-million dollar award.

We have come a long way since the days of three-ring binders. Still, many lawyers do not understand the benefit of these types of products. The response I hear from many is that “they are too expensive” or “my case is not big enough.” Both statements are wrong. While there are up front costs in purchasing the software, training, and having the data properly coded, those costs are recovered many times over during the course of the litigation.

I have tried to convince others that if you have more than a box of documents and five depositions in a case, you should be using these products. If you are involved in complex litigation, you must use these products. Like any technology, however, they do have shortcomings. Much like a PC, they are not always user friendly and require some special expertise. This is why a critical part of your plan should be to partner with an experienced litigation consultant who can provide the necessary support and troubleshoot issues. If you do that, you will benefit greatly from these products, not to mention the extra room you have by getting rid of rooms full of binders. **LTN**

—Michael Phillips is a partner in the New Orleans firm of Frilot, Partridge. Website: www.fpkc.com. E-mail: mphillips@frilotpartridge.com

For more information about inData software products, visit www.indatacorp.com or call 800-828-8292

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