

PUBLICATION

Bringing Technology to the Trial

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My first trial in 2002 was an arbitration involving the alleged mismanagement of thousands of insurance claims. My client, the suing insurer, sought damages against the claims administrator. The key evidence in the case involved certain audits that were conducted of the claims administrator. Seven of the audits clearly showed that thousands of claims were overpaid. One other audit, however, was positive for the administrator. When I first sent the audits to the claims administrator, my cover letter simply said: "Please find the seven audits."

We had hundreds of exhibits to manage, and we hired a trial technician to put the exhibits on a large screen for arbitrators. My cover letter spent a disproportionate amount of time on that screen, much to my chagrin. The implication was that counsel had sent only the favorable evidence to the expert. But, as a point in fact, we had sent the eighth audit via a separate cover letter. The opposing counsel, in a flourish during cross examination, brought that last audit out. He dropped the audit – which was close to three standard reams of paper – on the table. It made an audible thud. He asked: "Did you miss this in your analysis?"

We won the case, but these moments made a lasting impression on me. There is a place for electronic presentation in the courtroom. There is also a place for tangible evidence that the fact finder can handle, touch, and feel. The trick to an effective trial presentation is managing both issues. This article will touch on a few of the key issues in bringing technology to the courtroom and making the most effective case presentation.

Early Decisions

Our eDiscovery team supports Baker Donelson's trial lawyers throughout its footprint. The trial planning starts with the first client interview and determining the right eDiscovery technology. Many (if not the vast majority) of modern cases require some level of electronic evidence, which must be effectively managed. This volume can run from several thousand documents to millions, depending on the case size, case subject, and amount at issue. The first step is picking the right eDiscovery technology that scales to the management of that case and its needs. We are constantly evaluating eDiscovery technology and vendors to find technology that is the right fit in terms of cost, scalability, and functionality.

Because eDiscovery technology is the tool that will, eventually, "feed" the trial with its documentary evidence, it is important to choose wisely. On one hand, the wrong eDiscovery tool can simply cost too much. In a recent case, we saved a client 80 percent of its technology fees as part of a vendor estimate by better planning and thoughtful lawyering. On the other hand, it may be important to consider downstream fact management and transcript tools that will allow better evidence management. Baker Donelson has worked with different eDiscovery technologies to ensure that our trial lawyers have the right tool for the job.

Flexibility and Trial Planning

There is no one-size-fits-all for trial planning. All of Baker Donelson's trial lawyers are bringing their highly developed and honed experience to bear in a particular setting for a particular type of trial. Thus, the trial planning must be flexible in order to meet the particular needs of that case. As depositions are taken and exhibits identified, various resources need to be available to manage that evidence and support the trial team preferences. The key is to meet the trial team where they are and help them get to where they want to be.

This means that the Client Services Group (CSG), Information Technology (IT) and the eDiscovery teams come together to make available a suite of tools that allows the trial lawyer to leverage their experience to prepare for trial. Whether it is specialized tools for transcript management, on-site war rooms for the trial team, or reconnaissance of the court room capabilities, Baker Donelson ensures that the trial lawyers have the flexibility to try the case with confidence. We also have a network of highly experienced trial support specialists that are available as trials get closer, to assist with the actual courtroom work.

The Place for High- and Low-Tech

You can make a big impression with video evidence, whether of a deposition excerpt or a video of the property that is on trial. For instance, our eminent domain trial team, led by [Joe Conner](#), defends privately-owned water utilities from municipal takeovers. Joe has used drone footage and interactive maps of the water systems to demonstrate their breadth and scope. Video evidence is an effective way of demonstrating the size of a water transmission system that exists, largely, underground.

But there remains a place for the tangible. Trial lawyers recognize the importance of the fact-finder being able to pick up the paper record, compare documents, and have access to the materials. This is a different experience than looking at it on a screen – as many of our desks show, given that many of us print the important documents that we want to handle. The same condemnation team will often dig up samples of the water transmissions mains, some decades old. Joe uses these pipe samples to demonstrate the condition of the system that the government is seeking to take. You can hold that material in your hands, visually assess it, and consider its overall meaning better in that tangible form. People react differently to touch, and teams across our footprint are skilled in knowing how to make the maximum impact.

Conclusion

Cases, like the trial lawyers who try them, come in many varieties. From start to finish, the technology options must scale to meet the needs of both the case itself and the trial lawyers involved. Inflexibility is not an option. The trial should always be the most important consideration, and the eDiscovery tool should be scaled and scoped to meet the merits. As the trial date nears, the technology must adapt to its needs and any remaining issues. In the actual presentation, the trial must have the flexibility to be high-tech in the presentation, while retaining the option to make an impact with more tactile evidence. This is the technology recipe for a successful trial presentation strategy.