

Do's and Don't's of Trial Support

By Kelley Hempson Brown

Many attorneys still balk at litigation support and trial presentation tools, thinking mere legal strategy will carry the day rather than “glitzy” exhibits. But knowing how to use support and tools can make the difference between victory and defeat in a trial, hearing, arbitration or other matter. As technology improves and more juries come to expect a high-tech approach, the ability to effectively implement these tools in venues inside and outside a courtroom can give your side the winning edge.

Your team should start planning for litigation support the minute you receive word of a proceeding. There are many steps and considerations to take into account, including the scope and nature of a proceeding and the client's goals for the particular matter. A government hearing will call for a much different approach than a civil matter. A so-called “bet-the-company” litigation will demand different strategies than a routine mediation.

Checklists are necessary throughout the life of the proceeding. Without such lists, lodging arrangements may be overlooked, your side may find itself without a secure Internet connection for research or real-time transcript feeds, or you may find yourself short on crucial supplies in a remote location. By developing and updating checklists, your team can ensure all the steps, expectations, timelines and necessary items have been taken care of. For future proceedings, these lists can be updated and adapted as necessary.

You should plan for every eventuality, carefully evaluate the venue, create a war room when necessary, have all the tools in place, perfect the use of these tools and develop a plan for breaking down everything once the proceeding is over. Taking these steps will aid your case more than it will weigh it down, helping your team reach the best possible conclusion for your client in a timely and cost-effective way.

Before the Event

Among the first factors to consider is the location. Immediately begin analyzing the venue and determine what presentation support you will need. Pull together estimates for support staff and equipment and the availability of the location.

Address timelines upfront by trying to get a handle on deadlines and dates for the matter—at the very least, try to determine an estimated start and end date. Research vendors that offer the support needed for the dates and locations where you will be working.

The scope of the matter is important. The longer the matter, the more days on the ground, materials, resources and prep time may be required. However, shorter matters do not necessarily require less support than longer ones.

Going to War (Room)

Depending on the location of the venue, a war room can be a benefit or a virtual necessity. The war room offers a communal place near the proceedings for project managers, IT staff and attorneys to meet and work, in addition to clients, experts and witnesses.

This is true even if the matter is taking place in a city where your team is located and you don't plan to put people up in hotels overnight. A war room close to the courthouse, such as a conference room in a nearby hotel, can serve as a central gathering place to get the brunt of your trial work done. A properly planned war room can provide a space to prepare and practice arguments and presentations, relax and refocus, make extra copies or send important e-mails and faxes. It allows the team to focus completely on the matter, without typical office distractions.

There are several considerations in planning a war room:

- *Timing:* This is crucial. Scope out locations in hotels and conference rooms as soon as possible, since they may fill up quickly.
- *Site requirements:* Location is a key consideration. The war room should be close to the proceeding location, but be mindful of your surroundings and the possibility of bumping into members of the opposing side's team.
Consider the surroundings as well. Is there a nearby office-supply store with convenient hours that can support your software applications with the capacity to quickly produce the exhibits you need? Will your team be able to easily get a decent cup of coffee late at night or early in the morning? Can you get takeout or delivery to keep your team fueled and able to work?
- *Space requirements:* Consider how many people will use the war room, including lawyers, paralegals, expert witnesses, fact witnesses and support staff. Determine how many of them will need a work space or computer. Consider if extra monitors will be beneficial to provide ample viewing for multiple people who will not necessarily need to be working the computers but are providing input on the presentation.
- *Site amenities:* Try to anticipate the extras you may need, such as a 24-hour IT staff or concierge service. If you are far from your office, quick access to knowledgeable IT people can be essential. It may make sense to interview the IT staff to see if they can offer the expertise you need.
- *Internet and phone requirements:* Reliable and secure Internet access is another critical consideration. If the service is wireless, is it reliable? Does it offer enough bandwidth? This can be a particular issue in smaller towns or when staying at independent facilities, rather than national chain hotels and conference facilities. Evaluate the phone service as well. Will cell phones work in the facility? Are there enough landlines? Will you need conference call services?
- *Security:* Security should be a priority. Determine what needs to be secured and how to secure it. Access to the space should be tightly controlled, so that only those who should be there will be there. Members of your team should be careful not to discuss the matter in the hallways or other public places.
- *Back-ups:* Consider a back-up plan for everything. Can you use the site's business center if your copy machine breaks down? Is there a near-by office center to make bulk copies and print-outs? Ensure that all data is backed-up and extra laptops and monitors are available as replacements for any computer failures.
- *No place like home:* The team will be spending a lot of time in the war room, so it should be comfortable. If you are staying off-site, stock the war room with pillows and blankets so you and your team can get some shut-eye. Bring a change of clothes and toiletries as well, so you can head straight to the courtroom if you need to.

Supporting the Event

Planning for the event requires a great deal of work, but the logistical details only increase as the proceeding begins.

If the proceeding requires travel, life becomes much more complicated. Travel arrangements must be made, then double-checked. If the event takes place far from the firm's offices, you will need to find a local shredding company, identify a support and equipment company and pinpoint the nearest shipping location.

Consider exactly who needs to arrive when — lit support may need to arrive early to prepare the venue and supervise equipment set-up. How many rental vehicles will you need and what size?

Equipment is another critical aspect of litigation support. There are many different types of equipment that could play a key role in helping sway the case your client's way.

Flat-screen monitors — LCD flat screen monitors (between 15-20 inches) positioned throughout the room can help engage everyone involved in the proceeding, allowing them to see displayed exhibits and real-time transcript feeds. As with all equipment, it is important to consider where the monitors are placed, so that all parties can see the displays, ensuring sightlines are not obstructed and voices are not muffled.

SMART Board — Use of a SMART Board or other interactive whiteboard can be effective if used properly. The SMART Board is a white board with a touch-sensitive display that connects to a computer and digital projector to display images from the computer. Members of the team can control computer applications directly from the whiteboard. During a proceeding you can call up an image of a schematic, have the witness mark it up on the board, which can then be saved, exhibit stamped, printed, and admitted it into evidence. Annotated documents can also be saved and used at a later date. Using a SMART board can eliminate the need for a projection screen and help decrease the number of monitors used in the proceeding.

During a particular hearing we supported, one of the exhibits was a timeline spanning 20 years. This exhibit was displayed in its native timeline application with embedded documents. During opening statements, the attorney controlled its display directly from the SMART Board. At one point, the attorney turned over control of the timeline to us while he continued with his opening and we controlled the display for all in the room to view.

Video conferencing technology — This enables a deposition, status conference or hearing to be conducted where various parties can participate from remote locations. This technology can eliminate the need for certain parties to travel to one location, while still effectively participating.

Document cameras, commonly known as Elmos, are advanced versions of overhead projectors. They can be used to display paper exhibits, objects in 3-D and images directly from a computer. You can zoom in and magnify items that witnesses and juries would otherwise have trouble seeing. Digital cameras can offer many advantages over the analog version, including better resolution image capture. Using video conferencing technology, a remote witness with a document camera on his end, can remotely share an exhibit which is transmitted to the monitors of the judge and other parties in real time.

LCD projector and screen — A projector is needed to display images onto a SMART Board or projection screen. By using a screen or SMART Board you may be able to decrease the amount of monitors being used in the proceeding.

Connection equipment and microphones — In setting up the equipment, you will need switches, splitters, surge protectors and extension cords. In courtrooms wired for this type of technology, judges usually control their courtrooms, even if the switch box isn't located in front of them. In other instances your team will control the operation. Attempt to scope out in advance the room where the proceeding will take place, or get the dimensions, in order to plan properly for the equipment you want to use. Know where the outlets are and use gaffers tape to tape down all wires on the floor. Based on this information you may find that a readjustment of your equipment needs is necessary — some spaces are too small for SMART Boards or screens.

Along with high-tech hardware, it's important to have color printers and copiers and external hard drives at the ready.

Bringing the Story to Life

Demonstratives and exhibits can be a touchy subject for attorneys. Some still dismiss the very thought of demonstrative exhibits, but such visuals can play a crucial role in a trial. Demonstrative exhibits help to create a visual story and bring your ideas and concepts to life for the audience. In many instances, such visuals may even be expected.

The specifics of the proceedings should govern the use of demonstratives. In some cases, less is more; but in other instances, the more demonstratives you use, the more effective your story-telling. Sometimes, an exhibit mounted on foam core board with highlighted text may be sufficient. In other situations, being able to actively illustrate the chain of events leading up to the case requires a more technological approach.

Software, including trial presentation software, timeline software, PowerPoint and real-time transcription software, can help tell these types of stories and aid the presentation of the case.

There are various trial presentation software packages available, most notably InData's TrialDirector and Verdict System's Sanction. Documents, videos and images are loaded into the tool's database to be coded, annotated and exhibit stamped for use specific to that proceeding and prepared for presentation mode. This allows you to go into

your proceeding with prepared presentations, pre-annotated exhibits and the ability to annotate documents on the fly. In this way, you can cut down on the amount of materials you bring into the proceeding by having all possible documentation ready in electronic format rather than sitting in hard copies in multiple boxes. Access to a printer enables you to create hard copies when necessary.

Timeline software assists with the narration of one story or with multiple aspects of a larger issue. These software packages have matured to allow for seamless integration with other types of software. They can link exhibits to events on a timeline through documents, photos, videos and images. Timeline software can integrate with other programs and can print to different sizes. They can export to other programs, (PDFs, JPGs, TIFs, etc.) and they can import from other programs (Excel, Access, Summation and Concordance). PowerPoint is a presentation tool that has long been used in the legal world. The team can prepare slides in advance for opening and closing statements, embed documents, video clips and audio for direct and cross examinations. Though PowerPoint can be an effective tool when prepared properly, use caution when creating slides and do not get so caught up in the bells and whistles that you lose the effectiveness of your point.

Real-time transcription technology allows you to connect your computer to the court reporter's stenographic machine and receive a real-time transcript feed. It is also possible to connect to this feed via a secure Internet site, allowing off-site team members to follow the proceedings in real time. Before and at the end of the day's proceedings, your team — even those who are not physically attending the matter — can immediately begin reviewing and searching through the "dirty" transcript feeds on your computers and offer feedback before the next day's events begin. Some software programs provide certain features such as issue identification, real-time video and audio recordings and IM capabilities.

When using real-time software, though, back-up plans are important. During one hearing we conducted in a hotel, we ran into a firewall problem and could not use the software we'd planned for. We needed to switch to an alternative software application which, while not as robust, allowed us to continue to receive a real-time transcript feed in the hearing room and in our witness room.

Once your team decides which graphics and demonstratives are worthwhile, make sure the story you tell is complete, clear and visually appealing. The personality of the client should be considered as well. Some may want an exhibit with more punch, while others may want just the basics. Comfort level with technology is a factor to consider as well.

If no one on your team has the type of expertise to create a compelling story with exhibits, consider hiring a graphic designer who can. Bear in mind, though that hiring a graphic designer can increase costs and lengthen the amount of time required to make the exhibits. An outside designer may not be available to make last-minute changes as needed. To help minimize costs, whenever possible do not print out any demonstratives until they have been finalized and copy-edited. Locate an on-site or local vendor who can offer back-up support when necessary. Be mindful that some national chains are actually franchises, and the level of expertise, knowledge and supplies can vary widely. While a vendor in Washington, D.C. can enlarge your exhibit image to mount to a 3x5 foam-core board and laminate it, that same vendor chain may not have the same materials or knowledgeable staff available in their Honolulu store. Try to finalize demonstratives beforehand in order to prepare for these uncertainties.

This is not the time to dive in without being fully prepared--practice makes perfect and is crucial for a smooth litigation support effort. You and your team must prepare ahead of time, so that you are comfortable with all the technologies you plan to use before the proceeding.

Shipping and Handling

When using high-tech solutions, preparation and practice beforehand are key. But while everyone has a horror story of hardware and software failing at the worst possible moment, it is equally important to have the low-tech basics in order. Carefully consider all the supplies you may need and ensure that you will have them all at your fingertips, including paper, manila folders, pens, highlighters, markers, pencils, tape and toner.

Moving all your equipment and information to the matter site can be extremely expensive. Consider freight shipping options for a large number of boxes. Arranging for a discount can cost less than the accumulated FedEx shipping costs. Factor into your logistical timeline the necessity to drive to the location in order to pick up and ship back items.

Additionally, factor in any travel distance between the war room and the proceeding location. Even if the two are in the same building, you may need to move equipment between the different spaces, so consider what can be shared and used between the two locations. Note what needs to be transported and how, as well as how much time should

be allocated in setting up everything, including testing and tape downs. If conducting the event outside a courtroom, consider setting up the venue to resemble a court of law. This provides a reminder to all involved that no matter the location, this is a legal proceeding and the rules of law and decorum apply.

After the Matter

Once the proceeding is over or a verdict has been issued, it's time to disassemble all the items that you put together so carefully. This involves breaking down equipment, contacting vendors, cleaning up the site and the war room, disseminating materials and shipping items back to the client, outside counsel or other support providers. Consider what you need to shred and what can be reused or recycled.

Don't forget continued support needs, including drafting filings or motions, transcribing notes and preparing for any follow-up trips. Technology has become so commonplace in the legal system that many high-tech solutions are practically expected. However, these tools bring their own complications and logistical demands, so it is important to plan ahead and not wait until the last minute when you decide to use them. And while cost is certainly a consideration, it should not be the only one — the benefits of technology should be weighed against the potency of the arguments.

Making all the litigation support and tools come together is a team approach — it's not just one department's responsibility. When everyone's skill and expertise are pooled, your team's combined efforts can give your clients the outcome they expect from your firm.

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