

# Using Technology to Manage Complex Cases

By Rene D. Harrod

**Most attorneys have come to realize—with varying degrees of resentment or excitement—not only that technology is here to stay but also that it can be a valuable tool in litigation. Particularly in complex cases, when used strategically technology can be a boon. On the other hand, technology can be a waste of time and money when it is not implemented in the right case, at the right time, and in the right manner. This article outlines several suggestions for using technology to manage complex cases. These suggestions are by no means comprehensive and will not all be appropriate for every case. When appropriately used, these solutions will save time and angst and will greatly increase counsel’s effectiveness during discovery, in trial preparation, and at trial. This brief survey therefore attempts to achieve two goals: (1) to persuade even the most antitechnology practitioner that there are a variety of easily implemented solutions that are well worth the effort, and (2) to applaud and encourage those who are savvy when it comes to technology and perhaps offer a few options that they may have not yet implemented.**

To set the stage for this technology survey, imagine the classic complex litigation: multiple parties; multiple law firms for each side; multiple simultaneously pending actions; multiple geographic locations of clients, attorneys, and documents; massive discovery, including scores of depositions; and a warehouse full of document production. The three most important problems that technology can solve are the following:

- communication: access to and distribution of all key correspondence, discovery material, and pleadings to the relevant professionals and client representatives;
- organization: maintenance of the discovery material and pleadings in a convenient, accessible manner that can be easily searched and reviewed; and
- discovery: availability of depositions and production documents for review and text searching in a manner that is accessible from anywhere.

Technology can accomplish these tasks and is particularly useful when the structure of the litigation team is such that multiple people at multiple locations all need simultaneous access to the same set of materials or when the volume of the pleadings, discovery material, and document production is so large that it is impractical to use traditional methods (pleading indexes, deposition summaries, “hot document” files, and so forth).

## Circulating Documents Electronically

The simplest way to introduce electronic files is to change the way incoming and outgoing documents are circulated—using e-mail rather than hard copy. The Inter-



net can do the intraoffice and interoffice communication. If a letter or deposition notice on a case arrives, the document can be scanned and circulated to the litigation team (including, if appropriate, the client, consultant, and other personnel) as an attachment to an e-mail.

The immediate benefits of this method are fairly straightforward: every member of the team is immediately informed of what is happening in the case and the client is saved the costs of circulating documents via mail or overnight delivery. The potential ramifications of this immediate circularization and receipt of correspondence and pleadings are unlimited. This type of electronic circularization has saved me more than once when I was out of town or in another office for a hearing or deposition and a letter or pleading came in that affected my plans for the upcoming hearing or deposition. On several occasions, the immediate circulation by e-mail of a last-minute supplemental pleading or cancellation of an out-of-town deposition has been critical to the team’s ability to be at the top of its game.

A few steps can be taken that might make this process even better: .pdf documents can be saved so that the name of the document reflects the date of the document and includes a brief description (for example, 2007-03-15: Letter from R. Harrod to J. Smith re meet and confer). If practical, as much of the text of the document as possible should be included in the body of the e-mail that circulates the document. For example, if the document is an outgoing letter, the body of the letter could be cut or copied from the word-processing program that generated it and pasted into the body of the e-mail; if the document is an incoming letter, the basic information could be included in the body of the letter (for example, “Note: This cancels the hearing on ABC’s motion to compel previously scheduled for May 15.”). This approach allows attorneys and clients who are traveling or relying on Blackberries to read the letter without the need to open the .pdf document. For example, an attorney who is in an all-day deposition on one case will still be able to

read and respond appropriately to critical correspondence that comes in on another case, rather than simply noting that “something” came in and reading it late that night when it may be too late for the best response.

### Implementing Electronic Case Files

Many firms have already implemented electronic case files in one form or another. Electronic files offer a wealth of benefits:

- Electronic files eliminate trips to the file room to get copies of pleadings, letters, deposition transcripts, and so forth. Rather, the attorney can access the entirety of the pleading index, correspondence file, and discovery material (such as all deposition transcripts) from the office computer.
- Electronic files also make the same files available to every person working on the file simultaneously; thus, for example, there is no need to look for the pleading index that one attorney has hoarded in his or her office or missing correspondence file because the file clerk is updating it and similar hindrances.
- Electronic files also allow the files to be searched, sorted, and indexed: every letter or pleading can be searched for the author, recipient, or (depending on the format and filing system) even subject matter or referenced word; the pleadings are sorted by date and can be searched for key words such as “summary judgment” or “motion to compel”; discovery requests can be reviewed alongside responses to them; and so forth.

Setting up electronic files depends in part on the particular software and document management systems in place, but the basic formula is a simple folder system: one folder per case file and subfolders for the various types of files. The figure shows a sample structure that allows the routine documents of litigation to be electronically organized

Any subfolders can also be further subdivided to fit the needs of the particular case. (For example, we include deposition exhibits in a subfolder under the deposition tran-

scripts so that the attorney can review the transcript and the referenced exhibits from a desktop computer.) Those who are more technologically inclined can create electronic pleading clips with the documents hyperlinked from the pleading index.

The simplest way to convert the documents so that they can be stored electronically is to scan them to .pdf format and then save the document or “drag” it to the appropriate folder. Alternatively, the e-mail that circulates the document can itself be saved in the appropriate folder, assuming that the subject line of the e-mail accurately reflects the date and title of the document. The advantage of this alternative is that many document management systems can search the body of the e-mail (which contains a brief description of the attached document) in a way that makes it possible for a search for a particular word or phrase to retrieve the sought-after document even if the document itself is not text-searchable.

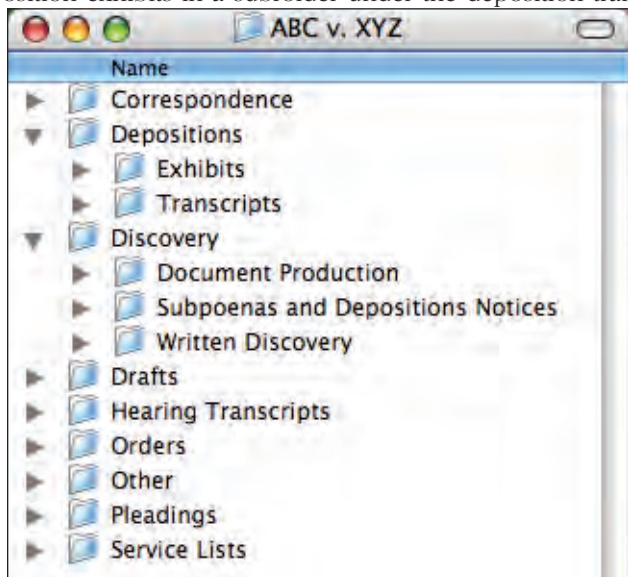
The immediate benefit of this type of setup of files is that all the files are immediately available to everyone who has access to that computer network (or who has a copy of the electronic case file on a CD or another storage device). For example, by simply clicking on “pleadings,” the attorney can review or search for any document ever filed in the action. Assuming the documents are saved under the date of filing and document title, the pleadings can be chronologically sorted or searched by date or title. (For the more advanced user, if the scanned documents are made text-searchable by optical character recognition (OCR) software, any of the pleadings, correspondence, and other data can be searched for a specific word or phrase.)

Electronic case files have proven invaluable time and time again. The time saved by the ability to retrieve filings and correspondence from months or even years ago without even getting up from your desk has increased productivity and improved the practice. The ability to pull a letter or pleading from a remote location on a moment’s notice has been a godsend in more than one preparatory session for a deposition or hearing. And the ability to search for relevant correspondence or pleadings—all letters from or to John Smith, for example—has increased the efficiency and responsiveness of the firm’s support staff and consequently improved counsel’s performance.

### Electronic Depositions and Deposition Exhibits

Technology should be your best friend in discovery and particularly in depositions and document production. Again, there are many levels for the integration of technology in these discovery mechanisms.

On the simplest level, one can request that the court reporter provide deposition transcripts in electronic format—for example, as a .txt file or e-transcript. The immediate benefits of this method are primarily threefold: (1) The electronic format is text-searchable, which is a boon to the paralegal or associate who is reviewing a deposition that lasted several days (or more than one deposition) for an answer that the partner believes said, for example,



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“something about John Smith.” (2) The electronic format can be cut and pasted into other documents as needed, which is helpful in distilling depositions, drafting motions to compel, and preparing for hearings. (3) An attorney can review depositions while traveling or working from home or from another office without needing to carry a stack of papers several inches thick everywhere he or she goes.

Down the road a bit further, the electronic format will be critical for trial preparation. For example, .txt versions are required for compiling all the depositions into a single database and for preparing video depositions to be shown in court with the text synchronized and shown below the image. Many law firms use case management software such as Summation or Concordance as a regular part of their case management. By loading all the transcripts into this type of case management software, all the depositions can be coded and searched by primary topics or key words.

It is also helpful to scan the deposition exhibits as soon as the deposition comes in and to add the electronic copies of the exhibits to the electronic case file. This step allows any attorney to review both the deposition transcript and the referenced exhibits from his or her desktop computer, instead of lugging the transcript with attached exhibits or asking the paralegal for yet another copy set of these materials. If the deposition exhibits are consecutively numbered between depositions and previously used exhibits are simply re-used under their original number, this also decreases the sheer volume of deposition exhibits, helps identify the key deposition exhibits, and saves trees. Those who are more technologically inclined can burn key depositions on a CD with hyperlinks to the referenced exhibits. This presents a user-friendly format that allows the client or a technologically challenged person to review a deposition without being overwhelmed with boxes of documents or nuances of technology.

### **Electronic Document Databases (Scanned and Coded Document Production)**

There are endless possibilities for involving technology in the production of documents in order to make document discovery more organized. Again, the options range from simple to exhaustive.

On the simplest front, the firm can maintain internal copies of the original documents obtained from the client and the actual document production in electronic formats. This approach allows for internal distribution and/or review of the document production on computers rather than on paper. This also preserves a complete and intact set of the original documents and the production documents and prevents panic in the last stages of trial preparation when one discovers that an attorney has ripped apart or written on original production documents that need to be used as trial exhibits, and so forth.

To the extent the volume of document production permits, an electronic copy of the document production can be added to the electronic case file. This allows quick and ready reference to production documents for briefs or de-

positions, particularly if the electronic copies are titled in the electronic case file by their date range, producing party, and/or date of production.

When the volume of original client documents or document productions by the parties grows beyond the size of a typical war room, the firm should consider investing in a document database. Common software programs, such as Summation and Concordance, allow you to load the documents and then have each document coded for certain fields (author, recipient, copy, date, subject, document type, and so forth). The coding can be done internally or it can be outsourced. If the size of the matter is significant and the case is active, a company could be engaged to provide scanning, coding, maintenance, and support services for the firm's electronic document warehouse. The cost is usually substantial, but the ability to search millions of documents for the ones authored by the upcoming witness or for the documents referencing the most important issue is invaluable.

It should be noted that these types of electronic document databases can be set up for a part of a case or for all of it. For example, rather than putting all the documents on a searchable database, perhaps this is needed only for e-mail. Some companies focus solely on providing e-mail database services that allow you to sort and review e-mail for privilege and production, code e-mail per various hot topics you designate, and search for e-mail by various fields.

### **Electronic Trial Exhibits**

Last but not least are electronic exhibits to be used at trial. In complex litigation, those cases that actually make it to trial are often massive and have an exhaustive list of exhibits. When the exhibit list begins to resemble a legal treatise, it is time to digitize the trial exhibits. This can be done in several ways. The simplest way is to scan all the exhibits and title each document according to the exhibit number. This allows instant access to any trial exhibit from any computer that has access to the electronic documents. The low cost and ease of this setup makes it a default option: even if the size of the case does not justify the other options, one should consider at least creating a folder on the computer in which electronic copies of the exhibits are placed.

The next step, which is also low cost and simple, is to copy the electronic trial exhibits onto a portable storage device such as a CD-ROM, DVD, or external hard drive (depending on the memory required). This step allows portable access to the electronic copies of the exhibit for all members of the trial team and eliminates the need to rely on a network or Internet connection; for example, when an issue arises that requires reference to a trial exhibit, counsel has the document available electronically no matter where he or she is located and there is no need to raise a live body to go to the office and fax or e-mail the document.

Going beyond just electronic copies of the trial exhibits, we move into text-searchable trial exhibits and the various

litigation support services that are usually outsourced to Trial Graphics, Legal-Eze, and companies of that sort. Regardless of whether you outsource your trial support work, you should consider converting the trial exhibits into text-searchable documents and/or coding the documents by standard fields. This step makes it possible to search the exhibits for any particular document type or term, such as a disputed term that arises in the middle of trial or any reference to the next witness offered by opposing counsel.

If the concept of electronic copies of trial exhibits sounds valuable but the technology is intimidating, consider outsourcing the technical support needed for the trial exhibits and working closely with the technician that the company you hired assigns to your work; he or she should be able to manipulate the documents in the way you would any nonelectronic trial exhibits, using highlighting and pointers and such. The technician can pull up any exhibit, enlarge the relevant portion, highlight the section on which you are examining the witness, compare documents side by side on the fly, and so forth. When something unexpected occurs during trial—as it inevitably does—this kind of technical support will allow you to respond to the unexpected in a manner that looks like you prepared for it months ago.

### Conclusion

As more and more courts are renovated and hard-wired for trials that rely heavily on technology, today's practitioner should welcome technology as a prized comrade rather than a foe to be feared and avoided. The advantages are overwhelming in terms of organization, efficiency, trial

support, and effective presentation. Indeed, today's judge and juror are not only familiar with high-technology presentations but also might expect as much in a weighty matter. The question, therefore, is not *should* we use technology but rather *how much* and *what kind* we want to use. The specific implementations are limited primarily by the counsel and the matter at issue, as technology itself continues to offer an ever-increasing number of possibilities and options for improving the practice of law. **TFL**

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rules provide a high-level road map for parties and their counsel, common law continues to explore the practical application of these rules to the unique nuances of electronically stored information. As courts continue to apply provisions, electronic discovery is likely to become an increasingly important aspect of enterprise risk management. Corporations and their legal counsel must work together to assess their companies' electronic discovery liabilities and to formulate appropriate data management plans. **TFL**

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### Endnotes

<sup>1</sup>In fact, rather than expanding the scope of discovery, the changes to the rules arguably impose, or at least reaffirm, some limits. For example, Rule 26(b)(2)(B)—an entirely new addition—allows a producing party to not produce ESI that is deemed legally inaccessible (an area of law that is sure to provide fodder for great debate) unless the requesting party can demonstrate good cause for production in spite of the burden and cost.

<sup>2</sup>*U.S. v. Arthur Andersen*, 374 F.3d 281, 297 (5th Cir. 2004).

<sup>3</sup>"Even valid purging programs need to be put on hold when litigation is 'reasonably foreseeable.'" *Rambus Inc. v. Infineon Techs. AG*, 2004 WL 383590 (E.D.Va. Feb. 26, 2004), amended by 220 F.R.D. 264 (E.D.Va. 2004); see also *Broccoli v. Echostar Communications Corp.*, 229 F.R.D. 506 (D.Md. 2005).