

Trial Practice Trends:

Tools to Cut Costs, Save Time and Get Results



In an increasingly competitive legal world, both clients and trial advocates are focusing on getting optimal results for their “litigation spend” while saving time and controlling costs. In this special report, leading trial advocates who are supporters of the Women’s Bar Association explain how contemporary court reporting services can facilitate achievement of these goals.

Going Digital: Fast, Affordable, Easy

According to the experts, online document repositories and software programs that facilitate secure 24-7 access to electronic transcripts and exhibits from any device are now easy-to-use, affordable time-savers that can cut litigation costs while enhancing performance.

“Clients prefer everything to be electronic now, especially if they’re in tech. If you show up now to a deposition or meeting with boxes full of documents, clients look surprised, but if you demonstrate a facility with technology, it inspires confidence,” says Lindsay Manning Burke, a director at Kenney & Sams who handles complex business litigation, often for high-tech and life science clients. “When I am in a deposition, our online repository gives me instant access to a prior deposition with contradictory statements. Using a laptop or phone, I can quickly search through hundreds of transcripts and linked exhibits from the same case, using indexes, search terms, and key phrases,” she explains, noting that she once had more than 140 witness depositions in a complex case that lasted for years.

John L. Strand is a shareholder and seasoned intellectual property litigator at Wolf Greenfield, a firm that supports the Women’s Bar Foundation and its Family Law Project for Battered Women. He recalls using iPads and electronic exhibit tools supplied by O’Brien & Levine Court Reporting Solutions to prep witnesses in a proceeding for a major technology client in Japan. “The client’s witnesses and in-house counsel absolutely loved it. Counsel was very impressed that we could instantly scroll through and zoom in on documents without fumbling through binders full of papers, and all of the witnesses could follow along on their own iPads,” says Strand, adding that it can take five days and a lot of money to ship boxes full of documents to Japan that would be difficult to drag through airports.

Strand notes that in a deposition, exhibits can be introduced, marked, and saved electronically with a simple app instead of paper. “This technology is a huge saver of paper, time, and money; and you never lose anything. There is no shipping, no shredding, and paralegals love not having to assemble and proof multiple binders,” he says.

Burke agrees. “Staff people hate the tasks of printing, proofing, and binding, especially when they have so many other demands on their time,” she says, adding that an online repository also enables her “to get 24-7 access to records and find specific text in just a few clicks with no down time.” Furthermore, she explains, scanned electronic exhibits in the repository are automatically linked to relevant sections



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of deposition and hearing transcripts to supply relevant supporting context at a glance.

Burke also uses paperless technology to highlight key sections of transcripts for cross-examination at trial and blow them up for a judge or jury. “I’m not a ‘techie’ but this is so easy and intuitive to use. There was no learning curve for me, and I’ve never had a problem,” she says. She also notes that federal courts are tech-enabled now, which makes it easy to use paperless tools to present text or visuals to jurors on individual devices or large interactive screens. For state courts, she can download the paperless records to a thumb drive or access the repository directly and project data onto a traditional screen. “I like to have both options at trial. It’s a belt and suspenders thing,” she says.

For those who worry about security, Strand suggests checking apps with your own IT adviser. “Our IT people checked the security [for the app we use] and approved it. Nobody can get in without necessary authentications, which include a unique session ID and password,” he states.

Video Tools of Today

Other experts note that video technologies for depositions and remote conferencing are more affordable and simpler than ever, offering multiple advantages over paper transcripts.

Pamela Berman is a commercial litigation partner at Robins Kaplan with 30 years of experience. The 2014 recipient of the WBA Lelia J. Robinson Award recalls a large case involving witnesses in multiple states that recently settled on the eve of trial. “We took video depositions of the opponents’ key witnesses, and it had to be a plus factor,” she states, adding that “their demeanor came through vividly, and it did not come across well.”

Berman says “the other side hated the videos so much, they frantically tried to exclude them,” arguing vigorously for a pretrial motion, even though a pertinent rule explicitly allowed the depositions for certain remote witnesses. “You know you have

something when it causes the other side to go crazy,” she quips, adding that video production and playback technology is increasingly simple. “Some paralegals helped me to prep for an airplane crash case, doing dry runs with video clips, and it was so easy a four-year-old could do it,” she remarks.

Trial Lawyers Using More Video

67% increase in video for depositions, day-in-the-life movies, etc. (2014-2017)*

44% increase in videoconferencing (annualized bookings in 2018 vs 2017)*

118% increase in use of video synchronization tools (2014 – 2017)*

*Statistics from Boston-based global reporting agency, O’Brien & Levine Court Reporting Solutions. Video synchronization, though not mentioned in this article, is a tech tool that matches video footage with transcript text so that each line scrolls as a witness speaks. This tool also facilitates rapid advanced search and playback functions, making it easy to create, find, mark, and display relevant video clips.

Advocates suggest that videos can be used to persuade not just judges or juries, but insurance adjusters and mediators who are evaluating cases. Some experts also use video to keep difficult opposing counsel on good behavior.

Diane M. Saunders, a labor and employment litigator and co-chair of the Retail Practice Group at the Boston office of Ogletree Deakins, says that video can play a key role in employment cases. “My cases are very different from commercial litigation. They involve much more human emotion and interaction, and a case can turn on the quality of that interaction,” she says, explaining that video reveals the timidity, belligerence, furtiveness or other traits of different witnesses.

She also favors video depositions and videoconferencing for another reason. “It reveals the physical demeanor and visual cues associated not just with witnesses, but lawyers too,” she says, noting that it can be just as important to see how the lawyers react to a

given question or answer as well as the witnesses.

Saunders, who does a lot of class action work that can involve witnesses from many states, says that modern videoconferencing tools are also useful for holding down costs without sacrificing quality of preparation. “It is not always cost-effective to attend an out-of-state deposition, but I may not want to participate just by phone or read a transcript, so I use remote videoconferencing. It’s smooth and cost-efficient. The court reporting service puts everything together on both ends, and they find the right reporters and technicians. All I have to do is show up,” she says.

Service, Scheduling, and Coordination

Berman, like many other Boston lawyers, uses O’Brien & Levine Court Reporting Solutions’ global service to set up and coordinate multiple out-of-state depositions in complex cases because O’Brien & Levine has a well-developed, thoroughly vetted global network of agency partners. Aided by the use of modern tech tools, the Boston staff and network partners can find the best locations and reporters with relevant experience anywhere in the world on a 24-7 basis, often getting the booking done in just a few hours. “I trust them implicitly to find the right reporters, and right locations, pick the best videographers, and stay on the cutting edge. They’re always customer-friendly and incredibly quick,” she says, concluding that it’s easier and faster than ever to book depositions now.

This “Practice Trends” story is brought to the WBA by O’Brien & Levine Court Reporting Solutions, a Boston-based global agency, owned and operated by Kenny Zais. For more information, see: <https://www.court-reporting.com/>.

Interviews and article by John O. Cunningham, a Freelance Writer, Editor and Communications/Marketing Consultant <https://johnocunningham.wordpress.com/>

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