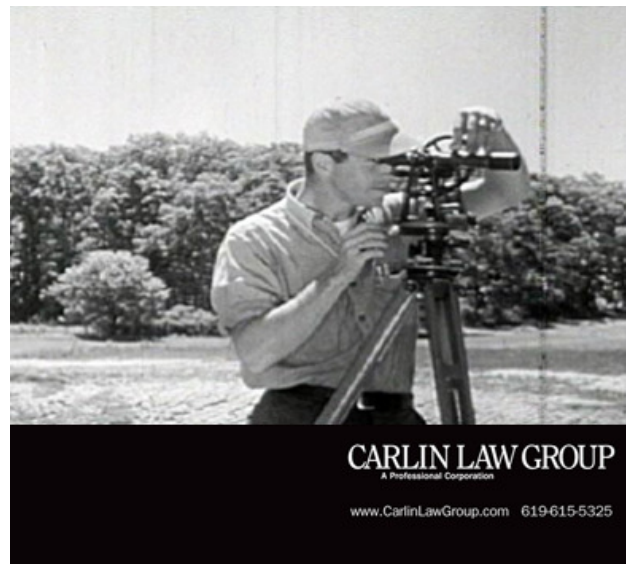


Technology in Litigation:

Tools to Find & Present Needles From the Discovery Haystack



**California Department of Transportation
Legal Division Construction Law Workshop
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I. Introduction

- **Basic Premise of Construction Litigation:**
 “In construction litigation what really happened on the Project does not matter... it’s what you can prove happened on the project 12 to 24 months after completion and everyone has left.”
- **Construction litigation is usually document intensive**
- **Construction litigation focuses on determinations of entitlement & quantum**
- **Entitlement determinations usually turn on a few documents**
- **Quantum determinations usually turn on many documents**
- **Use of technology during litigation can help to efficiently and economically gather, evaluate and present large quantities of paper and electronic information and evidence**

II.

Using Litigation Technology to Gather Documents

- **Gather Paper Documents for Batch Scanning**
 - **Inventory document file structure**
 - **Decide whether to scan all, scan none, selective scan**
 - **DocBreak sheets at lowest level of document unitization**
 - **Single sheet**
 - **Staple**
 - **Clip**
 - **Binder**
 - **Be sure to maintain parent/child relationships**
- **Endorse Scanned Images with Bates Numbers**
 - **Unique alpha numeric identifier**
 - **Use alpha prefix to ID sub-universe such as document source**
 - **Electronically endorsed on each page after scanning**
 - **Maintains inventory control & prevents surprises**
 - **Reference in depositions & briefs**

III.

Using Litigation Technology to Evaluate Documents

- **Document Databases**
 - **Summation, Concordance, FYI Reviewer, Ringtail, etc.**
 - **Aggregates documents & information**
 - **Allows for efficient review & use of large universe of information**
- **Coding Documents in the Database**
 - **Objective coding**
 - **Done by anyone who can read & recognize documents**
 - **Fields: Author, Recip, CC, DocDate, DocTitle, DocType**
 - **Outsourced for about 10-12 cents per field**
 - **Be sure to “normalize” the coding**
 - » **‘Letter’ vs. ‘Correspondence’ vs. ‘Fax’**
 - » **Use pre-defined terms from drop down window**
 - **Subjective coding**
 - **Done by persons knowledgeable with issues & legal significance**
 - **Fields: Priority, Privilege, Issue, More Review, Use@Depo, Trial**

III.

Using Litigation Technology to Evaluate Documents (cont.)

- **OCR (Optical Character Recognition)**
 - **Converts scanned document into searchable text**
 - **Usually about 90% accurate translation**
 - **Does not preserve formatting**
 - **Allows for searching on key names & terms**
- **Databases Allow for Sorting & Review**
 - **Sort by Author, Date (to see chronologically), DocType, etc.**
- **Databases Allow for Analysis & Elimination**
 - **Priority coding: HotDoc, High, Medium, Low, Irrelevant**
 - **Privilege review: Search by privileged names/terms**
 - **Issue code to link important documents to one or more issues**

III.

Using Litigation Technology to Evaluate Documents (cont.)

- **Databases Allow for Further Uses**
 - Code & track which documents have been produced to opposing counsel, sent to experts, etc.
 - Search by ‘issue’ to easily review documents relating to each issue
 - Search on ‘privilege’ to print privilege logs & burn CD’s for production
 - Search on ‘use @ depo of’ to pull/organize documents for depos
 - Search on ‘trial’ to print trial exhibit list
- **Other Considerations- Stipulated or Court Ordered Case Management Order Concerning:**
 - Inventory of documents
 - Production of documents
 - Shared objective coding
 - Shared document databases
 - Inadvertent disclosure of privileged documents
 - Who bears the cost?

IV.

Using Litigation Technology to Present Documents

- **Examples of Trial Presentation Programs:**
 - **Powerpoint**
 - **Sanction**
 - **Trial Director**
 - **ExhibitView**
- **Use Trial Presentation Programs to Present Evidence:**
 - **Single documents**
 - **Side by side documents**
 - **Photos**
 - **Videos & videotaped depositions**
 - **Demonstratives**
 - **Animation**
 - **Project chronology**
 - **As-planned vs. as-built**
 - **Impact of delayed installation**
 - **Impact of differing sight conditions**
 - **Interactive Demonstratives**