

LITIGATION SUPPORT A Special Report

In Short, He Said This

Many firms find that old-fashioned deposition summary helps in the long run.



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How does your firm manage its depositions? Advances in note-taking technology by court reporters and software programs such as Live Note and Real Legal are excellent tools for highlighting key testimony. In addition, synchronizing a transcript with its exhibits and any video testimony has become common practice in Washington.

In addition to using the latest technology to stay competitive, are you also still doing deposition summaries? You remember—digesting of the testimony into page and line references and topic headings that paralegals and associates used to prepare for every deposition? If increasing bill rates and client scrutiny of litigation expenses have led you to abandon this once-standard practice, keep reading. You may not be as prepared for trial or as cost-conscious as you think. Many firms are still using summaries, and for good reason.

- **Locating key testimony.** Summaries help locate key testimony as well as, and in some cases better than, text searching alone. Consider the following scenario. You're working on a case where the senior partner insists that a key witness used the word *catastrophic* to explain what would happen if an invention reached the wrong hands. Simple enough—the deposition transcript has already been loaded into the case's Summation database. You conduct text searches using key words and phrases. Yet hours later, your searches still haven't yielded any relevant returns because the witness never used the word *catastrophic* in the testimony. What do you do next?

As a litigation consultant, I have met with dozens of litigators and paralegals around the country and have asked this question. The response is almost always the same. They start reading the entire transcript and flagging anything that could potentially be the reference the partner had wanted.

Summation and Concordance are great databases and allow complex searching across all discovery, including transcripts.

Unfortunately, they're not always the best tools for pinpointing testimony. Searching conversations is often more difficult than searching other types of documents because, in the spoken word, most people will periodically go off subject, speak in tangents, and back up in their thought process. In addition, memory is tricky, and when dozens of witnesses are being deposed, one person's testimony can easily be confused with another's. In the hypothetical example, instead of using the word *catastrophic*, the key witness used *dire*. Deposition summaries have page and line references as well as topic headings, allowing relevant testimony to be pinpointed in minutes and relieving the confusion that can be experienced.

- **Organizing multiple deponents.** Deposition summaries are also helpful on cases that have been inactive for years, that have been inherited from another firm, or that have large teams of attorneys and paralegals. When dozens of witnesses have been or are being deposed, it is difficult to keep everyone on the litigation team current on the testimony. Some witnesses will need to be deposed again; others are strategically unnecessary. In cases where the players have changed, all the text searches in the world will not give the same context that a summary does. Each individual's testimony has nuances that are learned only through reading the transcript or a summary. The summary recaps the entire text and condenses a 200-page transcript down to about 10 percent of its original size.

- **Managing work flow.** Often, the professionals who would be tasked with completing summaries work on multiple cases with multiple colleagues. Case managers and senior litigation paralegals are often the individuals turned to for information everyone on the team needs. They're the highest non-attorney billers in the firm and are busy with document productions, setting up war rooms for trial, and cite-checking briefs.

At first glance, it seems logical to eliminate deposition summaries from their workload. A wise decision, maybe, but it doesn't mean the summary should be eliminated altogether. The fact

remains that combining deposition summaries with the advanced search engines available today can streamline the efforts of your litigation teams, including the case managers.

As for the question of systems that highlight key testimony, consider this. When you bought used textbooks in school, did someone else's highlighting help you pinpoint what you needed for your upcoming exam? Taken out of context, highlighted testimony does not always give the rest of the trial team the information they need; the team ends up reading a number of pages before and after what has been highlighted. The truth is that highlighting is most helpful to the person doing the highlighting and less helpful for anyone else.

Of course, Summation and Concordance are helpful databases for housing all discovery. But besides the fact that text searching is not always reliable, these search engines often cost more time than you might think. Think of a hypothetical Internet search. Suppose you want to buy a pair of shoes at Nordstrom online. You know the shoes you want and where to find them on Nordstrom's Web site. You add them to your shopping basket, but end up looking at other shoes as well, just to be sure that these shoes are exactly what you need. Next thing you know, your eyes wander, and you're looking at the Nordstrom sale items. You may even go to a couple of other sites. Before you realize it, you have wasted far more than the five minutes you intended to spend buying shoes. In short, Summation and Concordance are powerful engines and can bring up interesting results, but they can also return results that distract you from your original objective.

Another advantage: Deposition summaries can be reviewed on the Metro, in a cab, or on a plane. They condense the transcript into an easy format and give the reader a good overview of each topic. Using technology is indisputably useful, but your team may spend a lot of time text-searching testimony that cannot give them the same level of context as they would get in a summary.

WHAT NEXT?

Since deposition summaries are time-consuming, especially when many witnesses are involved, managing their completion may be a hurdle you have to overcome. Most of the time, your litigation paralegals and associates are already working at maximum capacity. Yet others in your firm may not be as busy and would be grateful for the extra billable hours. Deposition summaries are an easy answer to this problem.

In the event that the firm's paralegals and associates are occupied or you have impending deadlines and cannot complete summaries quickly enough to make them worthwhile, there are service providers who specialize in deposition summaries. To use an outside provider, it's a good idea to ask questions in certain key areas:

- **Cost.** Most deposition summary services offer billing by the page rather than by the hour. Billing in this manner keeps your costs fixed regardless of how long it may take to summarize each deposition. There may be surcharges for overnight couriers, expedited service, or supplies.
- **Quality.** Deposition summaries done outside the firm should go through a quality control process to ensure that the

summaries follow the format you're used to seeing and accurately reflect the key topics. In addition, the summaries should be checked for consistency, accuracy, length, and typographical errors before they're sent back to the firm.

- **Security.** Most service providers have their consultants sign confidentiality agreements and will have mechanisms in place to avoid conflicts of interest. They should facilitate additional conflict checks or specialized confidentiality agreements at your request.

In addition, some providers ensure security by having their consultants work on a secure Web-based application that allows the work product to be captured online in a password-protected environment. If consultants use their own computers and save the work product to their personal hard drives, you may want to consider additional measures to protect the product.

- **Credentials.** Paralegals, law students, attorneys, and reporters are excellent consultants, but even experienced legal professionals can be ineffective summarizers. Beyond interviewing and checking education and references, some service providers will actually test consultants on their ability to summarize text in a clear, factual, and succinct manner.

• **Customized formats.** One of the biggest hesitations in outsourcing work is a concern with the format of the final product. Provide a sample summary of how you prefer your summaries to look and your service provider should be able to customize to suit your needs. Some services will even provide the first summary free of charge so that they can get your feedback and ensure that they will meet your criteria.

- **Deadlines.** Your time line is what is most important. If you had the time and resources in-house, you would not be outsourcing this billable work. Your service providers should understand this and have the resources necessary to do as many summaries as needed. Based on the length of the testimony, you should get a realistic turnaround time for completion of the summaries.

• **End product.** How you plan to use the summaries is critical to whether this service will be helpful to you. The provider should accommodate any request for file format and delivery vehicle—be it e-mail, CD, hard copy, or other format.

Whether you outsource or use your own staff for deposition summaries, consider the real cost of doing without them. Most veteran attorneys who began their practice using deposition summaries have not warmed to the trend of doing without them, and for good reason. Others who were quick to eliminate them from standard practice are adding them back into the fold.

Reviewing depositions through text searches alone can be more time-consuming, less accurate, and more costly than if your legal team uses deposition summaries in conjunction with search engines. Given the quality, timeliness, and security of work product available today, a return to summarizing depositions as a standard practice may be a good idea.

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