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## Electronic Transcript Management Technology for Litigators

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For some of us, back when we were in school, the concept of "transcript management" consisted of determining whether a particular elective course should be taken for a grade or on a pass/fail basis, in light of potential GPA ramifications.

Today, for litigators and those who work with and provide technical support to them, transcript management has a very different meaning -- applying technology in an effective and efficient manner to collect, organize and analyze records of testimony from and for use in depositions, hearings, trials and other litigation contexts.

Litigation testimony may well be the most difficult aspect of information generated in discovery for lawyers to get their hands around because of its inherent nature and format.

But it also may well be the most significant in terms of its value as trial evidence, in part because it is literally the words of the opposing party or its experts or representatives.

That combination of complexity and importance has driven the creation of tools and technologies to deal with such data (and ancillary material such as exhibits) effectively and efficiently.

### OVERVIEW OF PRODUCTS

Both the transcripts themselves and the litigation support tools to master them have evolved in a somewhat parallel progression. Those of us who have practiced for a significant amount of time recall transcripts making the revolutionary jump to ASCII, facilitating rudimentary but critical searching, although leaving something to desire in certain aspects of ease of use (such as unclear page and line numbering and formatting when printed) as compared with its traditional paper predecessor.

That was followed by the more recent evolution to e-transcripts, which maintained formatting and location citation integrity (critical to briefing and cross-examination outlines) and that now also can support features such as electronic witness signatures (important for reasons including establishing authenticity and admissibility) and real-time transmittal. They are also read-only and can be password-protected, providing comfort that the text has not been tampered with or altered.

Similarly, transcript management software has evolved, starting with whatever word-processing software one was using (into which

excerpts were manually cut and pasted, with page and line information and formatting painstakingly repaired). That finally gave way to more robust and dedicated applications, which, among other things:

- Make it easier to load/incorporate data;
- Enhance the ability to use the data received;
- Expedite digesting, highlighting and annotating;
- Provide powerful searching functionality;
- Show search term hits in proper surrounding context;
- Allow hyperlinking to other resources;
- Facilitate handling and synchronizing with video testimony; and
- Support enhanced printing, such as in compressed format (saving both trees and back muscles).



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Those who have never used a dedicated transcript management system, or one as advanced as the leading current offerings, should give doing so serious consideration -- because your opponents may well be. These programs can increase the accuracy and speed with which you locate necessary information, and therefore your cost-efficiency, all of which can positively affect your bottom line.

There are several excellent offerings in the marketplace today that can provide advanced electronic transcript management functionality. Only you can decide what package is most appropriate to your situation given your particular current and anticipated needs and resources.

Two of the leading current offerings are TextMap, from Lexis/Nexis CaseSoft, and LiveNote SR, from LiveNote Technologies. These packages can be easily integrated with affiliated or third-party products such as CaseMap, Concordance and other popular case management applications.

Other commonly used high-end products are CT Summation Blaze LG and offerings from RealLegal (the latter is now a division of LiveNote, Inc.).

Those are just some examples of the powerful packages available for your consideration.

### QUESTIONS TO ASK

In determining what is the best fit for you, there are a number of issues you should consider when assessing the feature set of the different offerings. Not all of these will necessarily be relevant to your situation.

How hard is the tool to learn and use? Is it intuitive? Does the user

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interface resemble standard applications that users are likely to be familiar and comfortable with already (such as Outlook)? You want this to be a tool that will be used, and used readily, by both those entering the data and those extracting the data. And you want to control training costs. Avoid offerings that appear bloated, with features you will most likely never use.

How easy is it to import and export data from and to other applications? You do not want to have to expend a lot of resources converting data. Avoid packages that store information in proprietary file formats that are problematic to export. You want to maximize the ability to switch to another tool if a better one comes along, if a particular client has a preference, if you end up collaborating with another firm, if a vendor closes up shop, etc. You want the package to allow easy transfer of excerpts to chronology software for creation of time lines, word-processing software for preparation of briefing and cross-examination outlines, and presentation software for use in designing courtroom demonstrative aids. And beware of programs that unduly limit the formats that can be imported. Make sure that there are no restrictions on importing based on the number of lines per page and whether or not headers or footers are present. Is there batch import/export functionality? Broad import/export latitude of both transcripts and annotations/coding is key.

Can the transcript text be easily hyperlinked to referenced exhibits and other documents maintained in your existing databases? Such linking can speed retrieval of mentioned source documents, minimizing the disruption to your flow of thought and work. It allows for easy comparison of testimony and the material testified about.

Does the tool obviate labor-intensive digesting and expedite processing using previously created issue codes? With increasing client scrutiny of litigation costs, the need to rely as much as possible on software and other technology to expedite time-consuming processes is critical. Are issue codes prominently displayed and readily available through buttons on the screen, pull-downs or the like? The ability to apply issue codes expeditiously is critical in any case where the volume of testimony is significant. Given that issues may evolve/change during the course of a case, how easy is it to modify, add and/or delete issues later on?

Can searches be run both across multiple transcripts and across exhibits? Can groups (less than all) of transcripts be selected for searching? How robust is the search engine? Are both Boolean and proximity searches supported? Will it report the number of hits identified? Can searches be stored for future reference and possible re-running?

Is there a limit on the number of records or volume of data that can be handled? This may be of significance if you are anticipating numerous similar or related cases. Do the hardware requirements exceed the specifications of your current equipment, particularly your laptops?

What are the reporting capabilities? Can the software generate an annotation report, including pulling together hits in noncontiguous portions of the transcript? Can reports show search terms in their surrounding context? Are reports customizable? Can reports be generated directly to/saved as PDF, reducing printing costs and helping road warriors?

Can the package effectively handle real-time testimony? Real-time

reporting is often a desired alternative to traditional transcripts and delivery. Such functionality can allow immediate creation of critical follow-up questioning and reduce travel and other expenses of those who need not be physically present at the testimony site. Does the software allow a remote viewer to communicate privately/securely via instant messaging with counsel who is actually present at the testimony site on a real-time basis while the examination is unfolding?

Can the package effectively coordinate and integrate video and audio recordings of testimony along with the standard transcription? Being able to search, locate and export audio/visual passages can dramatically increase the impact of the testimony you choose to marshal in cross-examination.

Does the package offer a "briefcase" portability function such that a user can download some or all of the database and associated files onto a laptop to carry along?

Does the software facilitate collaboration, allow simultaneous remote use and provide easy replication/synchronization so all can work with the same data? These are critical features to make sure that everyone on the team stays on the same page.

## CONCLUSIONS

Beware of false economies: Keep in mind that the actual cost of the package is just one of the financial considerations. A nonintuitive program that requires extensive expensive training and does not provide useful shortcuts for labor-intensive data entry and review can cost far more in the long run.

The package must also be flexible: Although where issue coding is done it is critical to identify issues as properly and comprehensively as possible at the outset, the reality is that new issues will probably arise during the review process, and/or your understanding of core issues may well become further refined (not a bad thing). You need to make sure the software being considered offers adequate latitude to handle such modifications without the need for wasteful and labor-intensive retooling. Normally, the relatively limited costs of setting up a transcript management system using one of the several established packages should be quickly recouped in enhanced productivity (and increased accuracy and effectiveness).

Do your homework: Many companies provide demo or even fully functional (albeit sometimes time- or volume-limited, or printing- or exporting-restricted) versions of their software for download by potential customers -- give the offerings you are considering a test spin around the block to make sure you like the ride. It is critical that such testing and assessment include the key likely and primary actual users of the software, as opposed to those a bit removed from the trenches. And don't limit yourself to information provided by the vendors; locate and read product reviews and seek out colleagues at other firms and companies who may have had experience with such tools.

Not surprisingly, when considering transcript management technology, a little prudent Q&A can go a long way.

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