Technology Tips for Document Review, Production and Use at Trial



Graphics and Technology for Litigation



Michael Kelleher

Partner/Litigation Consultant, Cogent Legal Email: michael.kelleher@cogentlegal.com Tel: 510-350-7616 Blog: www.cogentlegal.com/blog LinkedIn: http://www.linkedin.com/in/mfkelleher Twitter: @lawnuke

At Cogent Legal, Mike consults on trial strategy and litigation graphics for IP cases and other complex litigation. Cogent Legal is a litigation graphics and trial strategy firm based in the San Francisco Bay Area that develops clear and compelling visual presentations for attorneys to use in mediation or trial. Services include animations, 2D and 3D graphics, medical illustrations, PowerPoint or Keynote presentations, interactive timelines, videos, strategic consulting and trial support.

Previously, Mike was the general counsel from 2009 to 2012 for DS-IQ, a software startup in Bellevue, Washington. Before that he litigated for 16 years at Folger Levin & Kahn in San Francisco where he was a partner and the head of the intellectual property group. Representative matters include PeopleSoft v. Oracle (unfair competition claims against Oracle arising from takeover attempts), and Cisco v. Apple (iPhone trademark). Before law school, Mike served in the United States Navy as a nuclear submarine officer on board USS Grayling (SSN 646).

Mike is the consulting author of the LexisNexis Matthew Bender Practice Guide: California E-Discovery and Evidence.

Mike is a registered patent attorney and a member of the California Bar. He received his J.D. degree from the University of California at Berkeley, and a B.A. from the University of Utah with a major in Chemistry.





The Crucible - PeopleSoft vs. Oracle

Unfair Competition Claim in California State Court

(November 2003 - December 2004)



Damage Claim for > \$2 billion

- 149 Customers Around the World
- **79** Days of Deposition
- 10 million pages reviewed
 - 4.5 million pages produced
 - Team went from 5 attorneys to 32 attorneys



Y2K Class Action-Auto Parts Computers

6 Plaintiffs

- **4** Boxes of Docs
- **6** Timelines
- **46 PMK Depositions**
- **G** Settlements





From: Bob Jones

To: Cindy Shepard Date: March 5, 2013

Subject: Re: Contract

On the 28th, Sid told me that XYZ would sign up for \$1 million.

ABC01234



Bob Jones types an email.



0.0.0	New Message	
1		
From:	Bob Jones	
To:	Cindy Shepard	
Date:	March 5, 2013	
Subject:	Re: Contract	

On the 28th, Sid told me that XYZ would sign up for \$1 million.



Bob emails it to Cindy.



0.0.0	New Message	
97		
From:	Bob Jones	
To:	Cindy Shepard	
Date:	March 5, 2013	
Subject:	Re: Contract	

sign up for \$1 million.



Copies go to iPads and other mobile devices.

The second se	
Free linds reses The Carly Sugard The Constant	

0		Ø A B E
	Bob Jones	Tendentif Bestelent Bodiffert Ball
To:	Cindy Shepard	
Date:	March 5, 2013	
Subject:	Re: Contract	





































The email

is found in

document

review.







The email is used at deposition.









Gmail -

Inbo

COMPOSE

From: Bob Jones To: Cindy Shepard Re: Contract

From: Bob Jones To: Cindy Shepard Re: Contract

From: Bob Jones To: Cindy Shepard Re: Contract

The Story of an Email





rom: Bob Jones To: Cindy Shepard Re: Contract



From: Bob Jones To: Cindy Shepard Date: March 5, 2013 Subject: Re: Contract

On the 28th, Sid told me that XYZ would sign up for \$1 million.

ABC01234



Tips

Contents

Tip - capture fields from electronic data	22
Tip - use Word to clean up OCR'd PDF text	23
Tip - use email fields for privilege log	24
Tip - make big collections into big PDFs	25
Tip - name docs for sorting / searching	26
Tip - let docs evolve & have each stage ready	27
Tip - making PDFs of produced TIFFs	28
Tip - add OCR to search PDFs	29
Tip - use advanced search in Acrobat	30
Tip - use a case management database	31
Tip - manipulate PDFs in page view	32
Tip - bookmark your PDFs to navigate	33
Tip - set initial views of key PDFs	34
Tip - understand hidden PDF text layers	35
Tip - digitally organize your trial exhibits	36
Tip - Better File Rename for bulk file naming	37
Tip - trial exhibit copies to a local printer	38
Tip - track trial exhibit rulings on a database	39
Tip - request Excel files in native format	40
Tip - use Snipping Tool for screen capture	41
Tip - create PDFs from the clipboard	42
Tip - create PDFs from the clipboard	43
Tip - use e-briefs to help the court	44
Tip - documents in opening with PowerPoint	45
Tip - show exhibits with video depo clips	46



Tip - capture fields from electronic data

000	New Message	
-		
From:	Bob Jones]
To:	Cindy Shepard	
Date:	March 5, 2013	
Subject:	Re: Contract	

On the 28th, Sid told me that XYZ would sign up for \$1 million.

ESI often has data in fields -get fields in discovery, and use them to sort and filter. CaseMap and others take fields from Outlook PST files / other sources and put them in a database.





Tip - use Word to clean up OCR'd PDF text

Copying text from a scanned & OCR'd PDF will often copy unwanted hard returns that mess with formatting. Solve this by pasting the copied text into Word and using the find and replace command. Search for hard returns (^p) and replace with a space.







Tip - use email fields for privilege log

Email fields (e.g., Sender, Recipient, Date, ...) can form the start of your privilege log.



	sert <u>R</u> ecords Record • 📇 [-1-	100 M 100	-	rent View U 🔺 📲 🍕 ዀ Filter 🕶 🏤 Issue Linki	ing Q:	Send	To ·			
ase Shortcuts			Objects - Docu					LexisNexis TimeMap		Fi	iltered: 5 of 38
Search	\$	-		Filter: (Privileged Do	cuments) Privilege + <> Not Privileged a	and Privil		LexisNexis NoteMap	_		el 🔽 Save
	>	Ī	Bates - Begin 🦯	Date	Full Name	Author	W	Microsoft Word			- Grid View
Favorites	*		P001267	Tue 09/27/2005	Letter from William Lang to Carol Sander, Esg.	Willian		Corel WordPerfect Web Browser (HTML)			
Facts	(31) (69)	=	P002019	Tue 04/19/2005 6:01:01 p.m. ET	Email from Phil Hawkins at 20050419 1750 to Gregory Poole	Philip I					CORE CORE CONTRACTOR
🔮 Persons	(18)		P002020	Tue 04/19/2005 6:30:01 p.m. ET	Email from Phil Hawkins at 20050419 1750 to Gregory Poole	Philip I		Facts Spreadsheet	e	Atty-Clie	nt
Documents	(38) (22)		P002021	Wed 04/20/2005	Letter from Gregory Poole to Phil Hawkins DTD 4/20/05	Gregor	y Poo	ole Philip Haw	kins	Atty Wor	rk Product
2 Questions	(14)		P002022	Wed 04/20/2005	Email from Gregory Poole at 20050420 1536 to Philip Hawkins	Gregor	y Poo	ole Philip Haw	kins	Atty-Clie Work Pro	nt and Atty
All Shortcuts	(31)	•	Funnamentalise								



Tip - make big collections into big PDFs

Scan files, boxes or folders and skip unitizing to the document level. Instead, scan a whole file as one PDF. Capture box and file names during scanning.



Box001_File001.pdf



Box001_File002.pdf

Box002_File001.pdf



Key Docs Notebook_001.pdf





Tip - name docs for sorting / searching

Good document naming conventions put documents at your fingertips. Think about how docs will sort, identifying docs from the name alone, and sharing docs with clients/others.

Box001_File001.pdf



Box001_File002.pdf



Box002_File001.pdf



Key Docs Notebook_001.pdf





Date Prefix Names Sort by year-month-day

- 🏂 1998 ERIC Clearinghouse on Adult Career and Vocational Education re 65 percent visual learners.pdf
- 🔁 2008-07-07 Trial Exhibits and Demonstrative Evidence (Michael Warshauer).pdf
- 🛃 2009-03-26 Ball State Study on Screen Time.pdf
- 🛃 2012-04 Persuasion Strategies Visual Persuasion Study.pdf
- 🛃 2012-12-06 Park and Feigenson Effects of a Visual Technology on Mock Juror Decision Making.pdf
- 🟂 2013-12-04 Annotated Article- Trial Exhibits and Demonstrative Evidence (Warshauer Dumont).pdf
- 🛃 2013-12-11 Mind Tools website on 65 percent visual learners.pdf
- 🟂 2014-01-15 A2L blog re Do not read PowerPoint slides split attention.pdf

🟂 2014-01-24 Amy Singer re Wizpor demonstrative online mock jury research.pdf

Trial Exhibits - TX prefix

TX0001.pdf
 TX0002.pdf
 TX0003.pdf
 TX0004.pdf
 TX0005.pdf
 TX0005.pdf
 TX0006.pdf
 TX0007.pdf
 TX0008.pdf
 TX0009.pdf
 TX0009.pdf
 TX0010.pdf



Tip - let docs evolve & have each stage ready

Track documents as they evolve from "look at this" to produced document, to deposition exhibit to trial exhibit to admitted evidence. Scan & track each stage and have the right version at your fingertips.



Tip - making PDFs of produced TIFFs

Electronic productions often come in multiple TIFFs with load files. If you want to take some of these TIFFs on the road on your laptop, use the "combine files in Acrobat" command.



👌 Add Files 🕶		8		tions Help	þ
Name	Page Range	Size	Modified	Bookmark for File	e
FCA0000001.tif	All Pages	49.52 KB	8/9/2013 8:	FCA0000001	
FCA000002.tif	All Pages	764.62 KB	8/9/2013 8:	FCA000002	
FCA0000003.tif	All Pages	71.94 KB	8/9/2013 8:	FCA000003	
ECA0000004.tif	All Pages	13.31 KB	8/9/2013 8:	FCA0000004	
ECA0000005.tif	All Pages	490.84 KB	8/9/2013 8:	FCA0000005	
FCA000006.tif	All Pages	131.79 KB	8/9/2013 8:	FCA0000006	
FCA0000007.tif	All Pages	764.60 KB	8/9/2013 8:	FCA0000007	
FCA000008.tif	All Pages	72.15 KB	8/9/2013 8:	FCA000008	
FCA0000009.tif	All Pages	65.33 KB	8/9/2013 8:	FCA0000009	
ECA0000010.tif	All Pages	490.81 KB	8/9/2013 8:	FCA0000010	
FCA0000011.tif	All Pages	131.75 KB	8/9/2013 8:	FCA0000011	
FCA0000012.tif	All Pages	764.60 KB	8/9/2013 8:	FCA0000012	
FCA0000013.tif	All Pages	764.59 KB	8/9/2013 8:	FCA0000013	
FCA0000014.tif	All Pages	63.51 KB	8/9/2013 8:	FCA0000014	
FCA0000015.tif	All Pages	13.35 KB	8/9/2013 8:	FCA0000015	
FCA0000016.tif	All Pages	764.59 KB	8/9/2013 8:	FCA0000016	
FCA0000017.tif	All Pages	52.99 KB	8/9/2013 8:	FCA0000017	
FCA0000018.tif	All Pages	51.83 KB	8/9/2013 8:	FCA0000018	
FCA0000019.tif	All Pages	42.14 KB	8/9/2013 8:	FCA0000019	
FCA0000020.tif	All Pages	490.83 KB	8/9/2013 8:	FCA0000020	
FCA0000021.tif	All Pages	131.77 KB	8/9/2013 8:	FCA0000021	
()	

Tip - add OCR to search PDFs

Scan produced documents, pleadings, correspondence, etc. and OCR it for searching.



Recognize Text	– 🗆 🗙				
		▶ Content Editing			
🛕 Add Files 🕶		▶ Pages			
Recognize text using OCR on	a set of	▶ Interactive Objects			
files.		► Forms			
Name	Size	▶ Action Wizard			
MS02000001 - 2012-07-26 Micros MS02000150 - 2013-07-30 Micros		▼ Text Recognition			
		A In This File			
		In Multiple Files			
		OCR Suspects			
		Find First Suspect			
		Find All Suspects			

Browse
ocation.
Insert After
_OCR .pc



Tip - use advanced search in Acrobat

Scan produced documents, pleadings, correspondence, etc. and OCR it for searching. Ctrl-Shift-F for advanced search in one or multiple documents with a nice interface for browsing results.



Search – 🗖	×	د ا	Search
Arrange Windows		Arrange Windo , Looking For: Google in C:\Use	ows ers\mfkel_000\Dr\Microsoft SEC
.ook In:		Results: 6 document(s) w	vith 69 instance(s)
C:\Users\mfkel_000\Dr\Microsoft SEC	~	New Search	₽.
What word or phrase would you like to search for?		Results:	
Google		⊞ - <mark>%</mark> C:\U\M	S01000001-MS01000149.pdf
Return results containing:			S01000150-MS01000260.pdf S02000001 - 2012-07-26 Microsoft 10K.pdf
Match Exact word or phrase	~	⊞ - <mark>1</mark> C:\U\M'	S02000150 - 2013-07-30 Microsoft 10K - MSFT_FY13Q4_10K.pdf
Jse these additional criteria:			12-07-26 Microsoft 10K.pdf oogle. We believe Windows competes effectively by giving customers choice, value, flexibility, se
✓ Is exactly	~	- 🄯 Apple,	Google, Yahoo!, and a wide array of websites and portals that provide communication
		- 🔯 Amazo	on, Google, Salesforce.com, and VMware. SQL Azure specifically faces competition from IBM, Ora
		with G	oogle and a wide array of websites and portals that provide content and
Whole words only		- 🔯 Cisco,	Google, IBM, Oracle, SAP, and numerous Web-based competitors as well as local
Case-Sensitive		🚽 🖓 produ	cts. Google provides a hosted messaging and productivity suite that competes with the Microsof
Proximity		and G	oogle in offering content products and services to the consumer. We believe the
Stemming		Apple,	Google, and Research In Motion. Skype competes primarily with Apple and Google, which
Include Bookmarks		<	
Include Comments			
Include Attachments			



Tip - use a case management database

A case management database such as CaseMap lets you track the relationships between evidence, witnesses, events, legal research, to-do items, and more.





Tip - manipulate PDFs in page view

The controls in Acrobat's page thumbnail view allow extracting, inserting, reordering, rotating and browsing your PDF.





Tip - bookmark your PDFs to navigate

Bookmarks in large PDFs and key documents let you navigate to important sections with a click. Highlight text, and hit ctrl-b to create a bookmark. Drag to nest and reorder marks.





Tip - set initial views of key PDFs

First impressions of key documents matter - if you take the time to bookmark a PDF, set its properties to open with bookmarks showing.



14	USI	Patent 5,870,949 - Cimperman.pdf - Adobe Acrobat Pro
<u>F</u> ile	Edit View Plug-Ins CaseMap D	vocPreviewer Window Help *
1	Create 🔹 🎽 🖹 🍙	0 🖨 📝 🖂 🍪 🦻 🦻 ₹ Customize ▼ 🛃
	● 1 / 38 Ⅰ Ⅰ	65.1% • • Tools Sign Comment
	Bookmarks	
	· · · · · · · · · · · · · · · · · · ·	United States Patent [19] [11] Patent Number: 5,870,949
1000	Patent 5,870,949 - PITTING	Cimperman et al. [45] Date of Patent: Feb. 16, 1999
0	APPARATUS WITH BOX CA	M [54] PITTING APPARATUS WITH BOX CAM; OTHER PUBLICATIONS WIPING BLADE, OR SEPARATING
43	🗏 🕂 Figures	ASSEMBLY ELBOIT Manufacturing Co., "Elboit Putting Machine," Brochure 2 pages)(1997).
127,4	FIG. 1	 [75] Inventors: Frederick J. Cimperman, Dublin; Klaus Silbermann, Sauol, both of Calif. [75] Inventors: Frederick J. Cimperman, Dublin; Klaus Silbermann, Sauol, both of Calif. [75] Particle California (Content of Content of C
	🖓 FIG. 2	Attornet Anost or Firm-Limbach & Limbach I LP Document Properties
	FIG. 2A	
	- 🖓 FIG. 3	Description Security Fonts Initial View Custom Advanced
	FIG. 4	Layout and Magnification
	FIG.24	Navigation tab: Bookmarks Panel and Page
	Field of the inventio	Page layout: Single Page 🗸
	BACKGROUND OF THE	Magnification: Fit Page 🗸
	SUMMARY OF THE INVE	Open to page: 1 of 38
	BRIEF DESCRIPTION OF	Window Options
	DRAWINGS	Resize window to initial page
	DETAILED DESCRIPTION	Center window on screen
	EMBODIMENTS	Open in Full Screen mode
	Column 19	Show: File Name
	CLAIMS	
	CERTIFICATE OF CORREC	User Interface Options
		Hide menu bar
		Hide tool bars
		Hide window controls

Tip - understand hidden PDF text layers

Acrobat documents can have a layer of unseen text. This is what allows searching. It also causes bungled redactions.





Tip - digitally organize your trial exhibits

Put digital copies of your trial exhibits on your laptop to have everything at your fingertips in trial. Name the exhibits well (e.g., TX0001, ...) so they sort. OCR them for searching. Cooperate with the other side to exchange copies to have a full set. Put good footers on each page.



See http://cogentlegal.com/blog/2014/03/organize_trial_exhibits/ for more detail and suggestions.





Tip - Better File Rename for bulk file naming

When gathering and numbering trial exhibits, use Better File Rename for naming exhibits.

See http://cogentlegal.com/blog/2014/03/organize_trial_exhibits/ for more detail and suggestions.









Tip - trial exhibit copies to a local printer

Give digital trial exhibit copies to a local copy shop for printing during trial. In trial, you often need printed sets of exhibits to be used with a witness. Each day, email the copy shop with the numbers of the exhibits you need the next day.



Trial Exhibits to Trial Laptops and Copy Center





Tip - track trial exhibit rulings on a database

Track introduced and admitted exhibits on a case management database.

2	Re Contract
F	
\cap	

	102	100		Filter: Full Name Containing
0	Trial Ex. # 🦯	Introduce +	Ruling +	Description 🐵
0	TX0001	3/20/14	Admitted	Warshauer Trial Exhibits article
0	TX0002	3/20/14	Not moved into evidence	ERIC Practice Application Brief Learning Styles Article
0	TX0003			Annotations on Trial Exhibits and Evidence
0	TX0004	3/20/14	Denied	Article - Screen Time
0	TX0005			Notes on visual immersion study
0	TX0006			Park & Feigenson study
Ø	TX0007			annotated Warshauer Trial Exhibits article
0	TX0008			Mindtools study on visual and auditory learners
0	TX0009	3/19/14	✓ Admitted	A2L on why reading PowerPoint hurts jurors

Tip - request Excel files in native format

Get Excel files in native format to understand formulas, comments, and crossreferences and for useful printing.





Pas		B I <u>U</u> ▼	—		· \$	neral ▼ % .00 →.0 umber	•	A Styles	Delete	• • • •	Sort & Fine Filter * Sele			
-	P7	• (fx	(IF(K7="C	0K",1,0))+				",1,0))+(IF +(IF(M7="			100		
1	C	D	F	07="OK"	,1,0)))	1	_	K	1	м	N	0	p	_
1 2 3	С	D	E	F	,1,0))) I			K	L	M	N	0	P	
1 2 3 4 5	C	Calendar Day 💌	Day of Week 💌	F Time 💌	1	J ▼ Amy	-	Julia	L v Cecilia v	M Nathan 💌	Sophie -	Eli	P	
1 2 3 4 5 9	С	Calendar Day 💌 3/31/2014	Day of Week ¥ Monday	F Time ¥ 6:00 PM	1	OK		Julia . OK	OK		Sophie V	Eli OK	0.01.00	ť
1 2 3 4 5	C	Calendar Day 💌	Day of Week Monday Monday	F Time 💌	1	Juni		Julia			Sophie -	Eli	0.01.00	-

Tip - use Snipping Tool for screen capture

Create images of on-screen documents using the Snipping Tool in Windows.

S		Snipping Tool	X Prom: Bab.lerves To: Group Demand
-	ile Edit Tools Help		Per Cardward Prome Sets James
in	File Home Insert Page Layu Calibri • 11 • B. I U • A* A*	$ \begin{array}{c c c c c c c c c c c c c c c c c c c $	Prom Sub Jarves To Greaty Depand Pie Cantrant Pie Cantrant Pie Cantrant Pie Cantrant Pie Cantrant Pie Cantrant Pie Cantrant To Greaty Depand Pie Cantrant To Greaty Depand
	2 C D E	F I J K L M N O P	
	3 4		
	5 Calendar Day Topy of Week 9 3/31/2014 Monday 10 3/31/2014 Monday	k Time Zane Amy Julia Cecilia Nathan Sophie Eli SUM T 6:00 PM OK OK OK OK OK OK OK 6:00 PM OK OK OK OK 0K 6:00 PM OK OK OK 0K 0K 6:00 PM 0K 0K 0K 0K 0K 0K 0K 6:00 PM 0K 0K 0K 0K 6:00 PM 0K 0K 0K 0K 6:00 PM 0K 0K 0K 0K 0K 0K 6:00 PM 0K 0K 0K 0K 0K 0K 6:00 PM 0K 0K <t< th=""><th></th></t<>	
	11 3/31/2014 Monday 12 3/31/2014 Monday	8:00 PM OK OK OK OK 7 9:15 PM OK OK OK OK OK 8	



Tip - create PDFs from the clipboard

Make a new PDF or add a page to a PDF by using Acrobat's "Create PDF from clipboard" feature.







Tip - create PDFs from the clipboard

Make a new PDF or add a page to a PDF by using Acrobat's "Create PDF from clipboard" feature.







Tip - use e-briefs to help the court

Put the evidence and law just a click away for the court with an e-brief.



COGENT LEGAL

Download a sample e-brief at http://cogentlegal.com/ blog/2013/07/e-briefs-for-hearing-or-trial-presentation/



44

and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor or joint inventor of carrying out the invention

subject matter which the inventor or a joint inventor regards as the invention

previously set forth and then specify a further limitation of the subject matter claimed. A claim in dependent form shall be construed to incorporate by reference all the limitations of the claim to which it refers.

(e) Reference in multiple dependent form .-- A claim in multiple dependent form shall contain a reference, in the alterr only, to more than one claim previously set forth and then specify a further limitation of the subject matter claimed. A multiple dependent claim shall not serve as a basis for any other multiple dependent claim. A multiple dependent claim shall be construed

construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof

CREDITION

LAW REVIEW COMMENTARIES

Tip - documents in opening with PowerPoint

When using PowerPoint in opening, go beyond bullet points, and put documents in context for the jury (e.g., a timeline).





Tip - show exhibits with video depo clips

In trial presentation software (e.g., Sanction), show the exhibits being discussed in video deposition clips.



In an S-Cam air brake system, the pushrod is attached to one end of a lever called a slack adjuster. (see figure 7). The S-Cam rotates, spreading the break shoes inside the break drum. The friction created slows down the rotation of the wheel and vehicle.







For further reading and additional resources:

- How to organize digital copies of your trial exhibits: http://cogentlegal.com/blog/2014/03/organize_trial_exhibits/
- How to use databases and weave ESI into the story of your case: http://cogentlegal.com/blog/2014/02/weave-esi-fabric-case/
- How to remove hard returns from a PDF: http://cogentlegal.com/blog/2014/04/hard-return-cleanup-pdf/
- Techniques for managing e-discovery and evidence in litigation: http://cogentlegal.com/blog/2013/09/sipping-from-the-fire-hose/
- Tech tip for easy access and analysis of key case info: http://cogentlegal.com/blog/2014/01/tech-tips-for-case-information/

