

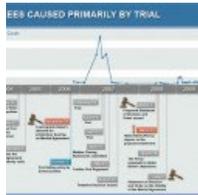


## Sipping From the Fire Hose: Techniques for Managing E-Discovery and Evidence in Litigation

by Michael Kelleher

Partner of [Cogent Legal](#)

(Originally published on September 25, 2013 on [Cogent Legal's blog](#))

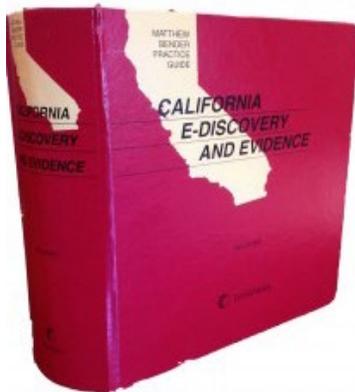


On Tuesday, October 1, 2013 at noon Pacific Time, I will present a webinar for SFTLA entitled “Sipping From the Fire Hose: Techniques for Managing E-Discovery and Evidence in Litigation.” If you are reading this post before that time, and you’d like to attend the webinar, please click [here](#) to register. In this post, I’ll share the slides from the webinar and I’ll preview a couple of the tips that I will be discussing.

### Surviving and Winning in Litigation

Litigation can sometimes feel out of control and all-consuming—there is too much information, too much to do and not enough time to do everything. In this presentation, I’ll discuss tools and approaches for “sipping from the fire hose”—getting the evidence you need efficiently, organizing it, and then presenting it at trial.

### Have a Plan for E-Discovery



In the webinar, I’ll be sharing and discussing a copy of the e-discovery checklist from my book, [California E-Discovery and Evidence, a Matthew Bender Practice Guide](#) (I serve as the consulting editor on the book).

E-discovery is a big topic, so I’ll limit myself to one big-picture piece of advice: Have a plan to get in and out of e-discovery without getting mired in it. This plan will require you to think early about electronically stored information (“ESI”) and how important it could be to your case. Once you understand what ESI is likely to exist, develop a targeted and reasonable plan to preserve and get that electronic data.

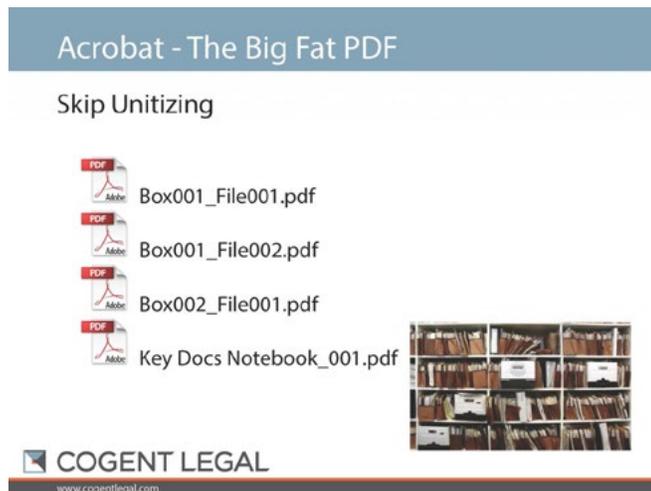
Once you have your e-discovery, you need to organize it, understand it and present it at trial. The rest of the webinar and this post will deal with those issues.

### The Many Uses of Adobe Acrobat

Some litigators like paper binders—I don't. While a paper binder is sometimes useful, I almost always prefer to have my documents in an easy-to-use electronic form that I can search, organize, annotate and incorporate into my pleadings or other work product. Moreover, I feel good when I save a tree from being made into a binder.

Adobe Acrobat is the primary tool that I use for my electronic documents. With Acrobat (the full version, not just the free reader), the litigator can do many things:

- Use scanned versions of paper documents;
- Capture electronic documents such as web pages or emails in a convenient PDF form;
- Combine individual documents into electronic “binders,” complete with bookmarks and annotations if you wish;
- Extract individual pages out of PDFs and save them as new files;
- Bates label;
- Redact;
- Comment and mark-up documents;
- Create hyperlinked e-briefs;
- and more....



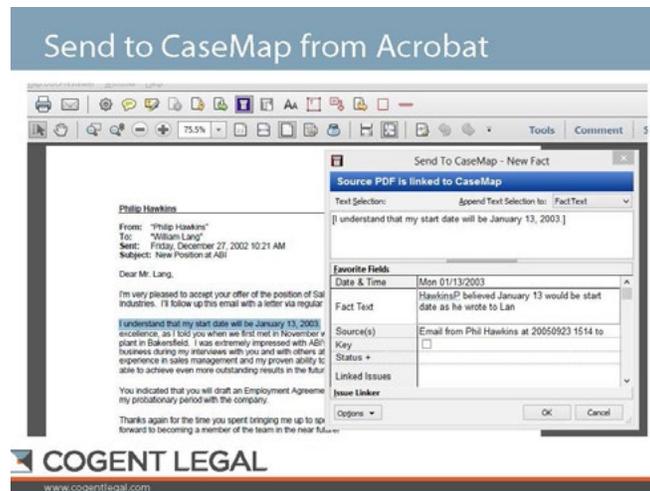
In the webinar, I'm going to discuss these features of Acrobat, and some tricks for how to use Acrobat. For example, in the slide pictured in this section, I discuss the “Big Fat PDF”—my name for the technique of scanning entire notebooks or boxes of documents into single PDFs. Reasons to do this are speed and lower cost; if you don't have to break the scanned collection

into individual documents, you don't have to worry about instructing someone on how to do this segregation (or unitization).

For example, in the *PeopleSoft v. Oracle* litigation, we received three fat binders of "key documents" from another law firm with perhaps 150 tabs of key collected emails. The first night we had the binders, I sent them out to a copy service that gave me back PDFs named with tab number. Thus, the next day, I had a collection of documents called KeyDoc001 (the document at tab 1), KeyDoc002 (the document at tab 2), etc. I then ran optical character recognition on this set, and set up a combined PDF document that had all three binders with bookmarks for each tabbed document. This gave me a searchable collection that helped us quickly master the factual background of the case.

## CaseMap – Linking It All Together

Once you have all the documents at your fingertips, you are still going to need to read them, understand them, put them in context, and plan for using them.



For example, in reviewing your key documents, perhaps for a wrongful termination case, you may read that two witnesses discussed an employment start date in January. As you read that document, you want to remember to ask the two witnesses about that conversation in their depositions. You may want to add the January start date to a chronology. You may want to ask another witness about his or her recollection of that meeting. Et cetera, et cetera. You need a way to connect all these facts, people, documents and issues.

CaseMap is the tool that I use to make these connections. CaseMap is a litigation database from LexisNexis. Although it is extremely powerful, it is also much easier to use than many databases. For example, pictured in the slide in this section is the "Send to CaseMap" plug-in for Adobe Acrobat. The "Send to CaseMap" plug-in allows a great work flow—you read a document on screen and immediately add it to your database. Say you decide you want to

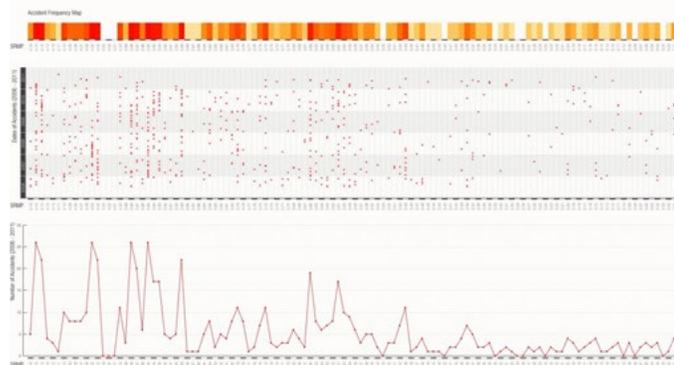
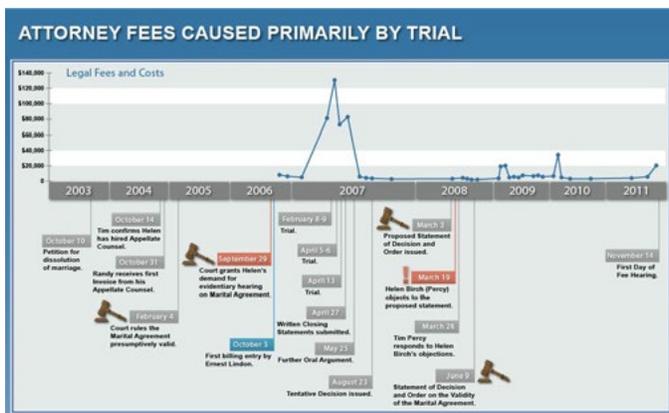
make a note about the document, for example, the January start date mentioned above. You highlight the text and hit "Send to CaseMap." CaseMap then presents screens allowing you to make notes about the document and the event, and link it to the witnesses, issues and other evidence in your case. You can even add questions or follow-up about the document. (Similar plug-ins are also available for Microsoft Word, Outlook, LiveNote, Concordance and other common programs.)

Once you have information in CaseMap, it is also easy to get it out in useful forms. You can create a summary report for the entire case (see a sample [here](#)). You can create a chronology, a witness list, a deposition exhibit list—almost any type of report you will need.

I use CaseMap from the first day I get a case all the way through discovery, motions, trial and appeal.

## Presenting Your Evidence in Compelling Ways

Of course, even when you have found and organized the evidence, you still need to present it to the judge or jury in a convincing way. We write about these issues regularly in the blog, and in the webinar, I'm going to discuss three examples discussed in other blog posts. For this blog post, I'll just give you the pictures hyperlinked to the blog posts, and let you click on the picture if you want more information.



## The Webinar Slides

Here is a Slide Share version of the entire slide set:



You can also download a copy [here](#).

Do you have tips to share on how to survive big litigation? If so, please let us know in the comments.

*Michael Kelleher is an IP litigator and tech attorney who consults with **Cogent Legal**, 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. Cogent Legal integrates the legal expertise of a successful trial attorney with the creative and technical talent of a design firm.*