



# RS:08 How to be the Ultimate Litigation Support Person

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## **Trial Support: The role of the Litigation Support Professional.**

I call them “the hardest working people in show business”. Litigation Support Professionals (LSP). They are as close as you can get to the “Jack of All Trades” term. The term litigation support has evolved over the last 10 years with the advent of technology and its constant change. Most large firms have entire departments that perform exclusively litigation support in whatever form it may take. Litigation Support can range from managing hard copy documents to integrated technology in multiple offices. The job of the LSP can be difficult enough during the day to day challenges that come up. But what happens when the firm goes to trial and needs the experience, expertise and professionalism of their lit support staff. How do you succeed in this role and what skill, knowledge and information will you as a litigation support professional need to ensure your firm isn’t “outdone” by their adversary or worse yet, let your client down in your ability to use technology to enhance the battle done in court. *Susan Kasek a veteran Litigation Support Manager of Brooks, Pierce, McLendon, Humphrey & Leonard, LLP in Greensboro, North Carolina* sums it up nicely in her comments when asked about the skills a good litigation support person should have. Ms. Kasek says that “*Type A Workaholic personalities are a best case scenario. The reality is that one must possess the ability to "see the forest through the trees." The ability to analyze the long term effects of the data management strategy could be the key to ultimate success or failure. Teams may have immediate and pressing needs, but it is essential to consider the effects of a "quick" solution versus the long-term implications, both in terms of cost and efficiencies*”.

Let's examine some of the skills that a good Litigation Support Professional (LSP) or a Litigation Support Manager (LSM) should have or at least think about.

## **1. Knowledge of Trial Presentation Technology**

Undoubtedly, the LSP must have a good working knowledge of trial presentation software, hardware, graphics applications and any supplemental tools one may use while presenting at trial. In almost every firm that has a litigation support department, the staff within that department is responsible for selecting the tools the firm will ultimately use.

### **Software**

13 years ago when trial presentation software for the personal computer was being introduced, software selections could not be made without a careful review of the hardware. Today, practically any PC or Laptop purchased within the last 5 years should be able to run any trial presentation software with ease. It will be up to the LSP to determine which tool best fits their firm's needs, the type of litigation the firm practices, whether or not the firm plans on using the software and the type of Case Management software the firm uses. All of these factors come into play when choosing what trial presentation software to use. Whichever decision you make, ensure that you are knowledgeable with its interface and the general workings of the software. It goes without saying that your knowledge of the chosen trial presentation software is paramount and thus, an LSP must be very proficient with the software their firm is using. Additionally, it is

imperative that the LSP have at least a basic knowledge of the tools available for presentation purposes. Additional tools such as graphic software, animation software, and any multi-media packages that may prove to be helpful. Most vendors do nothing more than find good software applications. They master those and then offer the services to their clients based on features the software possess. As an LSP, you should find the same tools and have those available to you in the event the firm needs them.

## **Hardware**

As mentioned above, most of the software developed today runs smooth and efficient on today's PC's or laptops. Thus, the hardware challenge for trial presentation software is not that difficult. What does become challenging is the hardware needed for trial. The number of firms that choose to own their own hardware components to assist with trial presentation software varies. An estimate would be 50/50 of firm ownership. Some of the more common tools are:

- LCD Projector
- Screen
- Flat Panel Monitors
- Document Camera (Visual Presenter, Document Camera, etc)
- Trial Presentation Cart
- Computer Video interfacing equipment (VGA Distribution Amp, Switcher)

- VGA Cable

All of these tools above are typically used in most trials when using technology. The LSP needs to answer the question; do we rent or buy the equipment?. Here are some considerations. If you buy equipment and you have more than one team going to trial you may face the challenge of one team not having equipment for trial. On the other hand, when you run out of equipment for more that one trial team you can then simply rent the equipment for the second or third trial team. Having your own equipment has some advantages:

1. You know it works
2. You know the expectations
3. Your trial teams have some familiarity with its use
4. You are not at the mercy of an outside equipment vendor who may or may not be on time for trial set up.
5. You can, if you choose, to bill the client for the use of the equipment. If you choose not to bill the client, you most certainly should let them know that you provide a value added service by having your own equipment.

Disadvantages are:

1. Your equipment is not “state of the art” and can be outdated as time goes on.

2. You can only afford so many sets of trial technology equipment and thus some teams may need to go without.
3. You may need to ship this equipment across the country for trial that are at out of state locations.
4. An interesting phenomenon is having equipment at trial while your adversary does not. What may happen is you that you are forced to let you opponent use your equipment, (e.g. on cross examination) at your expense. Denying the use of the equipment may upset the judge or the jury.
5. Billing a client for the equipment. This can become a sensitive matter?

One thing for sure, the LSP needs to be on top of the hardware and trial technology in order to properly advise their firm of what is out there and how to use it.

### **Staffing Trials**

The hardest part of staffing trials for an LS manager is the “rollercoaster” schedule that most trials have. In most cases, Litigation Support is heavily involved with the trial team. It gets worse when litigation has not settled and the next, soon-to-come step is trial. The number one problem for a litigation support professional is scheduling. Typically trials require the total immersion for the professional staff on the legal team. The Lit Support Professional can’t always afford to dedicate his or hers total time to one trial. The firm usually relies on Lit support for multi case support. Having one precious member gone for a duration of time covering a trial

can become costly causing other trial teams to go with out. You must be able to juggle you and your staff's resources and man-power. Here are some of the biggest hurdles with trial schedules and the problem trying to match man-power to trial project.

1. Cases settle at various times. (courtroom steps moments before opening statements)
2. Case can be pushed due to rulings by the court
3. Motion for Summary judgment can changes an 8 week trial to a 2 week trial.
4. Other cases can come up during the planning of your trial causing some LSP's to be spread too thin.
5. Staffing experience and expertise may cause an LSM to have to re-think who works on what project. Different cases may require different staff. You may have already schedule out your most experienced staff member.

The other decision you need to make is which staff member works with what team. One of the most important elements of a trial team is the ability to get along with your co-workers. This is even more apparent when you are spending 16 hours a day with them in an out-of-state location. Now you are faced with dealing with personalities. *Susan Kasek of Brooks, Pierce, McLendon, Humphrey & Leonard, LLP in Greensboro, North Carolina says; “*

*“Despite being knowledgeable about the legal profession, one's ability to communicate and serve as the interface between attorneys and paralegals and vendors is paramount to success.*

*This ability to communicate with the attorney team could be the key to ultimate success or failure. You must recognize that you are the interface and understand that your role can put you in the situation of "walking a tightrope". The attorneys are clearly very intelligent people, and one need only communicate to them the information and options, and leave the decision making to them. Likewise, the paralegals excel in the task of assisting the attorneys and are fully versed in the content of the case. The paralegals are crucial to communicating information as to the status of the actual document management aspect while the attorneys communicate the direction the case is taking. A Litigation Support Manager must be able to understand the role of providing information and options to help the team meets its goal. There is no all-in-one solution for every case; you have to listen and communicate."*

Ms. Kasek's point is well taken in not only your role as the LSM but also any of your staff's roles when working with others.

### **Outsourcing vs. In-house**

This age old question comes up in every project at each phase. Should we outsource this task or do it in-house. When it comes to technology, an easy convenient way to handle technology tasks is to outsource it to a vendor. In that way, you are handing off the headache of managing the technology at trial to an outside vendor. Thus you can focus on other tasks for prepping the team for trial. On the other hand, will your trial team be able to work with the outside vendor you choose. When asked Ms. Kasek with Brooks Pierce about outside vendors, she says: "What

*project is complete without a vendor? Outside of the firm, one has to have some business savvy. The old adage is that it is not often what you know, but WHO you know that matters. **The ability to build relationships with vendors and have a trusted network of people to call when you need answers will serve you well.** It is best to always operate with vendors in a straightforward, honest, sincere way”.*

The next question is how to select a vendor for trial services. Of course it all depends on what exactly the trial project entails. But, in general here are some considerations:

1. **Experience.** How long has the trial consultant been doing this? I not talking about demonstrative boards or running a laser disc. How long has the consultant been taking PC based technology into a courtroom and actually sat through many trials? This is where hands on is most important.
2. **Variety of skills.** If you are hiring a trial technology consultant do they have more skill than running a trial presentation program from a laptop. Can they:
  - a. Do graphics and demonstratives on-site if needed
  - b. Understand case management software and the integration and migration from case management application to trial presentation
  - c. Can they process evidence on site, compress video –analog to digital, or scan in images, digital video or audio editing.
  - d. Understand trial advocacy and the way a trial works

- e. Understand Windows operating system and general IT to assist with war room tasks
  - f. Are they creative and strategic in their contribution to the trial team
3. Do they “**get along with others**”. As a LSM, you will be chastised more for hiring a grouch, than you will for hiring someone who lacks one or two skills in the overall scheme of things. No one likes to spend 4 weeks someone they can’t get along. As Ms. Kasek points out above, you need to know these consultants and ensure that the work compatibility will be smooth.
  4. Are they **proven in their field?** That is, have they “walked the walk”, worked large trials throughout the country and been involved in major litigation. Are they recognized by others around the country or are they just a local vendor that a few application on a laptop.
  5. Do have they expert **knowledge of courtroom technology** including projectors, flat panel, video and audio applications, cabling, video distribution amps, video switchers and complex audio systems. They must be able to trouble shoot and repair items in court. You can’t have one consultant for the courtroom hardware and another for the software. The same consultant must know both.

In as much as your consultant needs to have the above mentioned expertise and experience so should you or your staff when you send an in-house professional to perform the technology and graphics work for a trial team in court.

One of the biggest mistakes I see among trial teams is forcing a paralegal to operate the technology and still perform the many duties they must do while at trial. When I work with trial teams my message is this. There is no doubt that any reasonable hard working paralegal can handle the tasks of operating the technology at trial. The problem is spreading a paralegal too thin. Keep in mind all the normal “traditional tasks” that they must do in combination with the management of the technology at trial. In most cases, this is a two-person job. Spreading anybody out too thin is not a good idea at trial.

Some final thoughts as outlined by Susan Kasek are:

*Managing those relationships you build with vendors is also walking a tightrope of sorts. It is not an episode of ‘Friends’ but about developing relationships that serve the greater good of your employer and clients. **For vendors, there should be no "secret" to winning your business. It should not be a matter of who befriended who, or who provides the most or best token gifts. Your across-the-board philosophy for vendors should be simple: Deliver what you promise ... a quality job, on time, at a reasonable price will result in getting more work. Be realistic, mistakes will happen. Strive for excellence, not perfection. Have the courage to dismiss a vendor if vendor action or inaction warrants it. Recognize vendors live in an agenda-driven world, getting the job means getting a paycheck, and although I can appreciate that pressure, one must cut through the marketing and sales pitch. It’s your project; you are ultimately responsible for its***

*outcome. Like any relationship, one with a vendor should be judged based on the overall experience of whether delivery meets expectations.*

In summary you can't be a Jack of all trades. No one is. But you must have at least a grip on many facets of litigation support technology to properly guide your firm in the right direction. They are counting on you to make certain decisions that most lawyers' are not taught in law school. The LSP, in my opinion is a very valuable asset to a firm in this day and age of technology. Develop your skills and your "stock" will go way up.

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