

Organizing Documents by Hand

by Robert N. Saylor

All of us have opened the file the night before a hearing only to find a pile of documents. Many of us have scabbled through a myriad of files a few days before trial, looking to see which pieces of paper we needed to prove or buttress the case. It is not enough to collect and discover the documents. They must be turned into evidence, and only through organizing them can you make them evidence. The evidentiary chain of documents begins in the lawyer's office with an unrelated mass of paper.

In a way, building a documents case ought to be simpler and easier than obtaining real evidence or taking the depositions of key witnesses. Yet most lawyers are supremely indifferent to document organization. Few of them organize well. Adding documents to a growing variety of manila folders (with or without labels) does not equate to marshaling the evidence. Many lawyers try cases and spin their castles of argument in the air without properly examining the foundation. My thesis is that the evidence in documents does not exist without relating them to each other, and I offer an approach to documents organization.

This approach is not a system for all cases. The case I have in mind is too big in which to keep all the documents in your head but too small to justify the time and trouble of a computer. Furthermore, no plan of document organization works for all types of litigation. But this approach will allow you to find a system for organizing documents in most cases.

My approach allows you to master the documents. Some cases may not require complete mastery, but this approach also allows you to decide how far to go. It will even allow you to create a hybrid system that depends on the needs of the case. The levels of mastery I call:

1. *Scouting;*
2. *Screening;*
3. *Organizing;*
4. *Synthesizing;* and
5. *Analyzing.*

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These are not rigid categories, and the approach must never be mechanical. You will have to scout the mountain before you can climb it. In the typical case, identify only one level of mastery for each project. You may not be able to determine the proper level right away. Spend time poking through the documents on your own, or take a trial run. That will give you a better fix on the nature of the documents and the time needed to achieve each level of mastery.

The trial lawyer himself must decide on the level of mastery, not the junior, the secretary, or the legal assistant. All of us have been tempted to turn a pile of papers over to someone else and say, "Here, have a look at these, get them organized, and come back to me when you're done." That is wrong. If you succumb, you have lost an opportunity to spend one of your most effective hours at the beginning of a case. To this end, I have devised three rules for scouting, as follows:

Rule 1: Plan. Hours spent in front-end planning are exactly 22 times more important than any later hours. This rule applies not only to the lawyer but to the client. Everyone must take part in creating the document-control system, most especially the client. Not only will the client have to pay for the system and experience the delays and mistakes the system produces, but the client must grasp the importance of the system. He will find more palatable what he has helped create.

Not only the client but the legal assistant ought to be consulted to understand exactly what you are trying to prove and disprove. We have all heard of well-versed paralegals striking gold on one important subject while actually digging on a different one. Not all buried treasure is found: the bright but untutored paralegal may slide past pearls and riches if he has not been brought into the inner strategy of the case.

Rule 2: Select. Select what you will do with the documents and how many documents you will do it to. Document organization often overwhelms a lawyer's time and a client's pocketbook. If you practice selection, some things will be missed or there will be delays in finding material that could have been retrieved instantly if a

grand, expensive system had been used across-the-board. You have to learn to live with that, to take educated short-cuts, and to follow your instincts.

Rule 3. Be flexible. Resist the impulse to do in the next case exactly what you did in the last one. Do not even organize all your documents in the same case in the same way. Emerson once said that "a foolish consistency is the hobgoblin of small minds." Different kinds of documents compel different kinds of control. Uniformity will force you to do too much or too little with regard to many documents.

Screening

Screening is the usual type of document review and the quickest. You will use it in one of these three circumstances:

1. When looking for a few documents out of a mass of them in which you have little interest;
2. When looking for supplemental or cumulative evidence, and the case will not be lost if you miss something; and
3. When sizing up a batch of documents, and your object is to group them by nature and usefulness rather than to comprehend their contents fully.

In screening, the reviewer has one main task and two minor ones. The main task is to distinguish the relevant from the irrelevant. You may then disregard the irrelevant documents for the time being. You must flag the relevant ones; they will set in motion another step, such as some higher level of review, or even document production.

If you do not need to maintain the integrity of the files, use an elementary flagging system; the reviewer can merely pull out the relevant documents and put them in a single pile.

You will ordinarily not want to break up the original file, and therefore you will have to devise a more sophisticated

system to identify the relevant documents. I recommend the use of gummed labels that peel off. Attach these to the top of the first page of each document in which you have an interest. You may want to identify on the label the reason for the document's relevance, the person from whose files the documents were taken, the number of copies you want made, to whom they go, and any questions about relevance, privilege, and the like. After copying those documents, remove the gummed label from the original and place it on your copy. In making these labels, you are supplementing the first-level review by going one step beyond relevance.

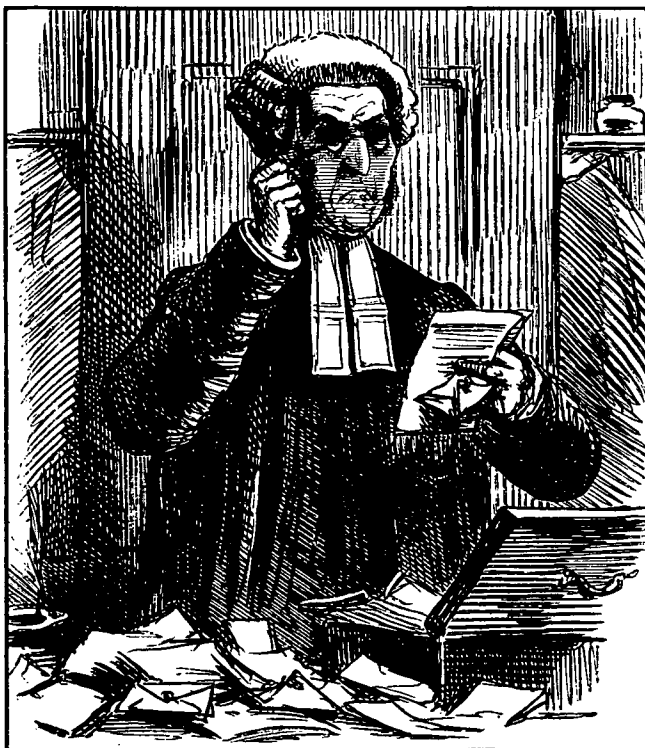
Another useful technique: have the reviewer dictate notes during first-level review. They can include the nature of the documents, the level of review, how long the review took, and the existence of any documents that are not of interest but may have to be retrieved later. In six months, the reviewer will not remember in whose files he saw competitors' pricing books, but it takes only a few seconds to dictate that fact immediately after he has sifted through a file.

Organizing

In screening, you have culled for relevance. You know something about the documents you pulled and something less about the documents you left behind. You have now reached the *organizing* level.

I have in mind a high level of organization, for documents must be kept in order and be readily retrievable. Screening also involves organizing. For example, you place all documents produced by a witness in one box, or you lay all company brochures in one file. But documents that already have been culled require more elaborate forms of organization. I suggest you organize a master file, following these rules:

1. Keep one set of all documents that is complete, clean, and centrally located. Appoint an enforcer to keep it that way.
2. Segregate all documents in the master set by source. For example, *Documents produced by the Defendant Smith on July 22, 1982.*
3. Assign prefix letters that designate the source of each set of documents. Then number each document in that set. At this stage, the numbers should be assigned arbitrarily, rather than chronologically or in any other meaningful order.
4. Do not allow anyone to remove documents from the master file except for copying or under a checkout system. The value of the master file lies in completeness. If you are going to check documents out, staple each document to a manila folder and provide sign-out cards with each group of documents. Document numbers can be stamped on the manila folder or on a peel-off gummed label. Do not stamp the number on the original document itself. Manila folders facilitate the physical handling of the files, prevent documents from becoming dog-eared, and afford a large space on which to write the subsequent history of documents.
5. Prepare a chronological index of the documents and keep it with the master file. This index becomes the principal means of identifying, locating, and retrieving the documents.



In synthesis, the real money and costs commence. Synthesizing is useful and usually necessary in any big case. Its purpose is to distill a modest amount of information from a vast amount.

Synthesis facilitates prompt retrieval and makes it easier to communicate the information to a large audience. That is all it does: its purpose is not to judge or assess or analyze; that is the next level. Do not allow synthesis to expand into analysis unless you have considered the decision to do so and trust the reviewer to do it. At best, inexpert analysis is expensive and inefficient. At worst, it can lead to faulty assessment of the evidence and poor decisions about strategy.

Synthesis produces three kinds of documents:

Bibliographic data—That is culled on form sheets setting forth the date, the author, the recipients, the recipients of the carbons, and the subject of the document. Sometimes you note important people or events dealt with in the documents. When carrying out this type of synthesis in document production, show the request to which the document responds, and if you have any reason not to produce the document, show that as well. Then attach a completed bibliographic sheet to the front of each document reviewed. Then compile copies of all these sheets into notebooks and distribute them to any lawyer who needs them.

Lists—Lists can refer to an individual, a witness, or a transaction. Lists like these may be organized chronologically or geographically. They are indispensable.

Digests—These do not attempt to analyze documents or evaluate them. They merely provide objective information in abbreviated form. Digests can be circulated to the entire staff for quick review, and each reader can check which of the documents he wants to see or have analyzed.

Analyzing

Analysis is often the most important part of document organization. It can be dangerous. The analyzer must decide whether the document has significance and why, and you can rarely reverse a mistake. In a case with many documents, if the reviewer skips the crucial document or even the crucial paragraph or sentence, you will probably learn about it only when it helps the other side.

To avoid surprises, the reviewer must understand everything about the case. The reviewer need not be the principal lawyer, or even a lawyer at all, but the choice of reviewer may lose the case for you. In cases with several issues, confine reviewers to documents that only relate to the part of the case they know.

The analyzer begins by giving the document a number and compiling the bibliographic information, unless that has already occurred. The analyzer should then assign a priority on a scale of one to five. One stands for the most important documents, five for nearly useless ones.

Assigning a priority means sophisticated screening. A priority number helps the reader pick the documents to consider, and the priority number saves time. Lawyers who need to view the evidence in the entire case can read only the analysis of documents assigned first priority. Most will want to read the analyses of the first and second priorities, but those responsible for narrow issues can read all the analyses dealing with those issues.

The priority system speeds review and eliminates distractions. In two hours' reading, you can understand the most important evidence in a case.

After assigning a priority, the analyzer states on paper the reason for the document's significance. That will include the analyzer's ideas about how the document can be explained or can fit with other evidence.

To analyze first- and second-priority documents takes time. If a document seems inconsistent with an earlier one, compare them and note the inconsistency. Try to explain the inconsistency.

The reviewer will have read many documents and names and events will make sense to him, more so perhaps than at any other time in trial preparation. This is the time for thoughtful review. Communicate with your colleagues by circulating all the analyses. Other lawyers may be doing similar work on other documents. Sharing analyses can be an important part of preparing the documentary evidence.

Many lawyers like to add a so-called subject number to the analysis. These lawyers outline the case and then assign numbers to each topic. The analyst then assigns a topic number to each document.

Many lawyers have used this system with success, but I can never come up with the right outline. I spend too much time writing and revising the outline as the issues change. By trial, my outline has so changed that the early numbers assigned have become useless. I intend to abandon the subject index unless someone can show me how to do one correctly.

Division of Labor

Who should participate in document organization? That depends on the financial strength of the client, the importance of the case, and the quality of the staff.

Legal assistants can do more of this work than most lawyers have realized. Most document work draws on talents learned outside law school: carefulness, the historical method, common sense, diligence, and efficiency. Legal assistants fail either because they have not mastered the niceties of the law or, much more commonly, because they do not understand what the lawyers are up to. The second defect can be remedied easily: tell them your strategy. The first may be harder to remedy but is possible. Well-supervised lay assistants can accomplish everything I have discussed.

Do not overlook your client. The client and his staff can help you cull documents and even synthesize and analyze them. Not only will that reduce his bill, it will increase his sense of participation.

Use your opponent. Discovery will force the other side to do some of the organization for you. It will help you understand your opponent's view of the facts and what he intends to rely upon.

Finally, use the clerical staff. We have learned that work that lawyers used to do can be done by legal assistants as well (and as cheap). Much of the work of documents, such as labeling them, filing them, numbering them, and preparing lists of them, can be accomplished by the clerical staff.

One of the challenges of law practice in the future will be to learn how to carry out litigation at a reasonable cost. You can begin with a team that organizes documents into evidence.