

Leveraging the Web 2.0 Movement for Better Trial Preparation

By James E. Hanlon Jr. – April 21, 2011

In preparing for trial, lawyers attempt to weave a coherent and consistent story from the mass of information available in documents, witness testimony, and other evidentiary sources. Determining what story those facts tell and how to tell that story in a way that best serves their client's legal position is an art. What is more of a science is the way in which the facts are distilled and the support for those facts is identified. Lawyers who make good use of technology to conduct their trial preparation are applying better science to their art. The technology and tools to aid trial preparation have changed drastically in recent years. Web 2.0 technology is that change. If harnessed properly, it can deliver more efficient trial preparation and better results.

What Is Web 2.0?

What is web 2.0 other than a shorthand way to convey the notion that there is new technology available that is better than what lawyers currently utilize? Simply put, web 2.0 refers to software and systems that mirror the way lawyers prefer to work, rather than software that requires lawyers to change the way they work. While there is certainly new, different, and better technology involved in web 2.0, the real value lies in the way web 2.0 technology allows lawyers to collaborate in real-time while sharing and finding information instantly. Web 2.0 tools eliminate the inefficiency of searching for information.

Web 2.0 technologies have features that make collaboration and communication more like the traditional way lawyers work and communicate while offering the power, efficiency, and widespread access that software can provide. These features are referred to as SLATES: search, links, authoring, tags, extensions, and signals.

Search

The content needs to be fully searchable. This requires that the content be indexed and taxonomies be employed so that subsequent searches can be tailored.

Links

The content must be linked, whether through hyperlinks or through technology used on social networking sites so that content additions and updates get populated into every part of the virtual trial room where that content is relevant.

Authoring

The content must be capable of being coauthored and cocreated. This is the hallmark of collaboration. Wikis, for example, permit this and allow each participant to add, modify, or delete content. Ordinarily, someone on the team is given the role of having final edit rights. Blogs are another example of Web 2.0 authoring tools. Like discussion boards, blog content is built in a more linear manner. The content is cocreated, and blogs provide a forum for members of the engagement team to post thoughts.

Tags

To facilitate searching by subject (and not only keywords) as a subject develops, tags are added as content is added. To borrow a phrase made famous by former Secretary of Defense Donald Rumsfeld, there are both “known unknowns” and “unknown unknowns.” Trial lawyers know there are things they don’t know when they set out to prepare for trial. They need to learn those things as pretrial proceedings occur. Web 2.0 tools are particularly well suited to help identify both the known unknowns and the unknown unknowns and make them “knowns.” Tags can be set up to capture new or different issues as they get fleshed out and enter the realm of “known knowns.” For the unknown unknowns, you need a method to identify those issues as they become “known unknowns.” Tags that are created collaboratively on the fly as content is added, so the “unknowns” become known, are referred to as “folksonomies.”

Extensions

This software acts as a virtual server and provides access to the applications regardless of where the lawyer works.

Signals

Signal technologies permit the syndication of information, either by an RSS feed or alerts sent to users to let them know of content additions or modifications. These signals can be set up uniquely to each user. For example, if the trial team designates someone as the privilege guru, that team member can set up his or her alerts to be notified only when someone contributes or alters content related to privilege. In this way, the team can allocate responsibilities and keep people up to date without inundating everyone with everything that gets contributed to the virtual trial notebook.

Web 2.0 and Trial Preparation

How does using web 2.0 tools aid in the art of trial preparation? These technologies allow trial lawyers to see the forest develop while still examining the trees thoroughly. These technologies allow all of the information to be organized, searchable, and available at the fingertips of trial lawyers in real time. These tools create a virtual trial notebook that becomes a living, breathing creation born of teamwork.

These same web 2.0 tools can be used in and during trial. You don't leave your trial notebook at the courthouse door, nor should you leave your virtual trial notebook back at the office. Done correctly, your virtual trial notebook will have everything you need and want, plus all of the backup and support should something unexpected arise at trial (which has been known to happen now and then).

There are a variety of reasons why trial lawyers should adopt web 2.0 tools for trial preparation. Some of those reasons have to do with economics. The adoption rate of email among lawyers grew only after network effects took hold and the value of being connected grew significantly. Lawyers also eventually understood that their clients wanted—indeed demanded—to communicate by email, so they adopted email as a technology to aid their practice.

It may not be network effects or a matter of using the means of communication their clients prefer that drives adoption of web 2.0 tools by lawyers, but, rather, the realization that to get the work done better and within a budget, working with web 2.0 tools becomes a must. Clients are increasingly imposing caps or hard budgets on engagements or parts of engagements. How do you fully prepare while staying within the client's budget constraints? Working with web 2.0 tools gives trial lawyers the comfort that they are fully prepared while keeping their firm's fees within the client's budget.

Trial lawyers may also choose to employ web 2.0 tools because these tools get them where they need to be—better prepared for trial. When you consider the tasks to be done and the fact that many lawyers contribute to the process of doing these tasks individually and in teams, it makes sense to work in a collaborative environment. Doing so minimizes, if not eliminates, the possibility that some members of the team do not know what others on the team are discovering about a witness or an issue. New issues, good documents, bad documents, and other developments can be visible to the entire trial team in real time. This allows for instant feedback and new directions to the trial team as they build the virtual trial notebook.

A Web 2.0 Case Study

In a factually complex, global multi-million dollar fraud matter that spanned years, with more than 135 potential witnesses, the challenge presented was determining what happened, when, how, and who did what. There were over three million pages of documents that held the story. The team of lawyers on three continents needed to communicate, collaborate, and uncover the story in real time. The discovery and trial schedule was tight, putting collaboration and proceeding on multiple tracks at a premium. The traditional linear method of building the case would not work. Individual silos of information or activity also would not work.

To meet the challenge, the following approach was taken.

- To facilitate communication, the team members had to have access to case information, detailed instructions, a real-time question and answer forum, and a discussion board so that everyone would be on the same page.
- To facilitate collaboration, the team had to aggregate information and coauthor their work product for witness files, key issue files, document summaries, and proof outlines cross-indexed to the documents, witness summaries, and issue files.
- To facilitate engagement control, team leaders needed to be able to monitor and manage the work process.

In short, the team needed a virtual trial room. The tools to be used to accomplish these objectives were web 2.0 tools and technologies. First, discussion boards and question and answer forums were created to facilitate team communications. Relational databases were used to track changes to instructions to the team. The team members used discussion boards to have dialogues visible to everyone on the team rather than point-to-point discussions that are the hallmark of email.

Next, to build the witness files and key issue files, “wikis” were used to create the content. Wikis are particularly well-suited to the task, because they give multiple authors the ability to cocreate and update content. Wikis allow for the tracking of all edits so that prior versions can be retrieved. Tags were used to index the content to make it searchable. Finally, basic scripts provided reporting from the databases in which the document images and other content existed as well as a dashboard for the team of lawyers to view, access, and work within this virtual trial room. All of this content was accessible to any team member using a web browser and a secure Internet connection.

Over the course of the pretrial work, no email was used. All of the work was paperless, and every post to the collaboration site was available to the entire team immediately. This allowed all of the lawyers to work and think as a single unit, creating a far deeper understanding of the case in less time. By using a unique and innovative way to communicate, collaborate, and control information, the team found the real story in the discovery material. This use of web 2.0 technologies allowed the trial team to communicate, aggregate, and synthesize information much more quickly and effectively than traditional methods would have allowed.

At the end of the day, one lawyer will stand up and face the trier of fact; however, trial success depends on the combined efforts of many people. Web 2.0 tools give trial lawyers the advantage of preparing for trial more thoroughly, more efficiently, and with more comfort that everything—both good and bad—has been discovered and accounted for as the trial lawyer determines how to best present their client’s story. In short, using web 2.0 tools increases the likelihood of success at trial. After all, isn’t that the best measure of the value of trial preparation tools and methodologies?

Keywords: trial, Internet, web, technology, preparation, pretrial, efficiency, tools

James E. Hanlon Jr. is the director of client development initiatives for litigation