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## Leveraging Technology To Win At Trial

*The Editor interviews Keith R. Dutill, a Partner at Stradley Ronon Stevens & Young, LLP.*

**Editor:** Have you always had an interest in technology, or are you a recent convert?

**Dutill:** I was never a technology lover and have no special aptitude for computers. I studied Political Theory and English at Cornell in the early 1980's and had trouble operating an electric typewriter. I had no computer training or expertise, and for the first ten years of my practice I resisted the use of the computer.

**Editor:** Why?

**Dutill:** Because of an unwillingness to change, mostly, coupled with a lack of understanding of the impact technology could have in driving both results and efficiency in litigation.

**Editor:** What changed your mind?

**Dutill:** I was in the middle of protracted discovery in a patent case when I stopped in on a demonstration of Casemap at an

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*Keith R. Dutill is a trial lawyer and partner-in-charge of Stradley Ronon Stevens & Young, LLP's Malvern, Pa. office. His practice focuses exclusively on the trial of complex business and intellectual property disputes. He is a leader in applying technology to deliver better results more efficiently in business litigation. Keith is a Fellow in the American College of Trial Lawyers and a past Co-Chair of the Trial Practice Committee of the ABA's Litigation Section.*



Keith R. Dutill

ABA meeting in Chicago. Within about ten minutes the power of that software and what it could bring to the complexity I was confronting in that patent case became obvious. We bought the software, I started using it right in the middle of the case, and I'm still using it today. That was a pivotal point for me, and it gave me an appetite for finding easy-to-use tools that put me in a position to get better results for clients in fewer hours.

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“[The technology] enables the client to have much more meaningful input into the development of the case.”

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**Editor:** We've heard general claims like that for years, often from the soft-

ware companies. Can you be specific?

**Dutill:** Sure, we use a database customized for litigation that organizes the facts of a case and links them to the issues in the case. The computer can store, organize and search data far better and faster than I can, and the software we use taps into that power. It frees me to think, evaluate, and make judgments instead of constantly poring over boxes of documents and notes written on yellow pads. And it enables the client to have much more meaningful input into the development of the case.

**Editor:** What do you mean by the client having more input?

**Dutill:** Think about it this way. The traditional approach was that the trial team reviewed piles of documents, and each lawyer took his or her own notes or dic-

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tated long memos to the file. Depositions were taken and then stored in the file for years before being retrieved by a paralegal, who read the transcript and prepared a summary, often without really understanding the key issues. When it came time for summary judgment or trial, everybody scrambled to find facts they thought they remembered, and the

*Please email the interviewee at [kdutill@stradley.com](mailto:kdutill@stradley.com) with questions about this interview.*

process of digging through the same boxes and notes started all over again. The client, meanwhile, had little or no front line exposure to the facts as they developed. How's that for efficiency? There was very little opportunity for the client to weigh in on the key strategic issues because so much energy was consumed trying to marshal the facts. Today, the tools we use enable us to put every fact from day one into a searchable database organized by issue and accessible to the client. When we meet as a trial team with the client, we look at the key facts together on a big screen and determine together where we are strong and where we are not. It focuses our effort and enables more intelligent evaluation of the merits.

**Editor:** You mentioned deposition summaries. Are you saying you don't do them at all?

**Dutill:** My own view is that they are a waste of time. When I take a deposition I leave the room with a disk and either annotate it electronically that night or dictate the key facts into the database while it is still fresh in my mind. Either way, I am in a position to circulate the highlights of that deposition to the trial team and the client that day or the next day, and the key testimony is permanently stored and organized by issue. I try to avoid lengthy depositions, and there are usually only a small number of

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exchanges in the deposition that will really matter at trial anyway. It makes no sense to me to stuff a paper transcript in the file and then have a paralegal or

junior lawyer who wasn't there summarize it a year later.

**Editor:** Are you a proponent of using technology in the courtroom, or do you share the view of some that it tends to make the lawyer look too slick or the corporate client look too wealthy?

**Dutill:** Ten years ago there may have been some legitimate concern about looking slick or big if you used technology with the jury. Today, that makes no sense. Jurors expect it because that is how they get information in every other arena of their lives. Complex news stories are broken down into short video clips, pictures, and animations, with the image on the television or computer screen changing every few seconds. Do we really think we can persuade by talking at them for hours, or having long, boring conversations with witnesses that they overhear without often seeing the documents we are talking about? Times have changed and jurors have changed, and if we don't account for those changes we will lose and our clients will lose.

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**Editor:** Is the trial then about competing to have the most high-tech presentation?

**Dutill:** Not at all. Trial is and always has been about credibility, clarity and persuasion. I'm not advocating entertaining

with a light show, and if that is your goal the jury will figure that out quickly and the case will suffer. We shouldn't overuse technology, either. The research has shown conclusively that jurors retain much more if they see it and hear it at the same time, and technology allows us to accomplish that now in the courtroom without overwhelming the jury with pyrotechnics.

**Editor:** How does the use of these tools by trial counsel help in-house counsel before the case gets to trial?

**Dutill:** First, it enables in-house counsel to participate as a full member of the trial team. We don't send long memos to in-house counsel with summaries of facts. Instead, we open up access to the facts as they develop in a format that is easy to access and digest. Inside counsel always knows the client and the key inside people better than we do and, when armed with the real facts as they develop, can point us to people and documents we would never find on our own. Second, it allows in-house counsel to evaluate independently the merits and the likelihood of success of particular claims and defenses and the case as a whole. They still ask for and get our judgment, but we like to position them to make their own judgment based on all the same information we have. Finally, as I said before, I think that the proper use of technology helps us win cases.

**Editor:** It has been said in industry that technology is a great leveler. Do you think that is true in business litigation today?

**Dutill:** Absolutely. It used to be that the truly major cases could only be handled by mega-firms that could throw dozens of lawyers into the case. Today, some of the best lawyering in the courtroom is being done by litigation boutiques of 40 and 50 lawyers who have mastered the technology. Some firms leverage hours. We leverage technology and free our lawyers to focus on persuading juries. It works better and it costs less. It's also a much more enjoyable way to try cases.