Chronology Best Practices

A fact chronology can be a tremendous asset as you prepare a case for trial. Yet, the majority of chronologies fail to live up to their full potential. Here are some simple steps that will help you get the most out of yours.

Chronologies Help Win Cases

From the starting gate to the finish line, assembling case facts in an accessible format can put you on track to courtroom victory.

The advantages are numerous. Chronologies are thinking tools. The very act of getting facts down on paper or in your computer clarifies thinking and makes the story of the case clear. Chronologies help ensure complete discovery. Which facts are disputed? Which still need sources that will be acceptable in court? And a chronology is a communication aid. A good chronology makes it easy for everyone on the trial team to share case knowledge.

A document index organizes knowledge by document rather than by fact. This approach ends up concealing facts rather than achieving the primary goal of a chronology—making case facts explicit.

Chronologies can also be used in a myriad of concrete ways. Use them when preparing for depositions, when developing motions for summary judgment and pretrial motions, in settlement conferences, and during trial.

Despite such benefits, during 15 years of jury research work, I've consulted on many cases where the effort to create a case chronology was abandoned during the discovery process. Why? In almost all these instances, work on the chronology ceased because the word-processing document containing it became an unwieldy epic. There was no way to isolate facts of particular interest or view them in meaningful relationships. When litigators needed reports showing just the facts relating to specific issues, for example, they were stymied because of the all-or-nothing nature of word-processing software.

Many litigators throw up their hands and attempt to memorize the facts or to jot them on legal pads. But this strategy invites disaster. Even the simplest of cases contains more facts than an attorney can keep in mind or organize meaningfully on paper. It's unrealistic to expect anyone to track notes scattered across many legal pads, much less to memorize 100 critical facts from each of 20 cases. When an opponent is using modern technology to organize and explore case information, the litigator with a paper system is operating under a dangerous handicap.

Unfortunately, those litigators who do stick with the task of creating a chronology often end up with unsatisfactory results. Many times, they end up with a list of case documents, sorted by date. Well, a document index is certainly useful when you need to get a piece of paper pronto. But it's hardly a chronology of case facts. Still other trial teams focus on facts, not documents, but create chronologies that contain just two or three columns: date, fact, and (sometimes) source. These layouts are a start, but they fail to capture critical information about the facts, information that can make the chronology far more valuable.

What's the solution? In the course of conducting jury research work on more than 300 civil and criminal cases, I've had the chance to work with and compare hundreds of case chronologies. Based on this experience, I have developed the following set of chronology best practices.

Don't Wait

Start a chronology as soon as you hear from a client.

From your first conversation with a prospective client you're gaining critical knowledge about the problem that led the individual or corporation to seek counsel. You should begin to create the case chronology immediately upon returning from your first client meeting.

No matter how early you are in the case, and no matter how "small" the case may seem, as soon as your client has given you an overview of the dispute, you have been told more facts than you can easily memorize and manipulate in your head. And why even try? Your mind should be reserved for thinking, not memorization. Memorization is a job for your software.

If you start your chronology immediately, it can be used to good effect very early in the case. Take copies of the initial chronology to your second client meeting, and use them to clear up any misconceptions. Do the facts listed accurately reflect your client's understanding of the case? Can your client supply any missing dates? Can your client indicate which potential witnesses and what documents might be sources for these facts? Use the chronology also to focus your client on potential sins of omission. Is your client aware of any particularly favorable or unfavorable facts that don't appear in the chronology?

DB, Not WP

Use database software, not word-processing software to create your chronology.

In contrast to word-processing software, database software makes it easy to create and maintain your chronology. If you employ a multi-user database, several trial team members can simultaneously enter, edit, and explore the facts. Database software automatically sorts your facts into proper date order. It can automatically provide the day of the week for each date you enter, and allows you to enter information using "pick lists," saving input time and eliminating the inevitable misspellings that occur with manual entry. And a database package can also automatically stamp each fact with the name of the individual entering it and the date and time when the fact was entered.

While the data-entry advantages of database software are significant, its most important benefit is to make exploring your chronology far easier. When you print your word-processing chronology, your choices are essentially all or nothing. You print the entire chronology or you don't print it at all. Thus, as your word-processing chronology grows, it becomes increasingly unwieldy and diminishes in value.

In contrast, database software makes it easy to filter chronologies down to any subset of interest. Rather than printing a chronology that lists every case fact, print ones that contain just those facts that are particularly important, that bear on a particular case issue, that mention a particular witness, that are particularly good or bad, that come from a particular source document, or that others entered into the chronology while your were in trial on another matter.

List Facts, Not Documents

A document index doesn't pass muster as a fact chronology.

Many of the "chronologies" I've seen are really document indexes sorted by the date. While a document index is a great tool for managing documents, it is a poor substitute for a chronology of case facts.

Documents can be the subjects of facts, e.g., "The contract was signed on 5/10/99." And they can be sources of facts, e.g., Internal Memo #2 is the source of fact "Construction of Hyde Memorial Hospital began on 08/02/99." But documents are not facts in and of themselves. Therefore a document index, a listing of documents, does not pass muster as a fact chronology.

A document index organizes knowledge by document rather than by fact. This approach ends up concealing facts rather than achieving the primary goal of a chronology—making case facts explicit. Documents, especially the important ones, are frequently the source of multiple facts. If the document chronology lists the name of the document, its author, recipients, etc., the facts it contains are never made clear. Including a summary of each document in the document index is not much of an improvement. Facts that may have occurred over a span of years are trapped in a single summary. It's up to you to read all the summaries and somehow pull the facts described in them into the proper chronological order.

Here's the solution: Read each document and cull the critical facts from it. Enter these facts as a series of discrete items in your chronology. For each fact sourced from a document, enter the document's name or starting Bates number in the chronology's Source(s) column. Consider entering a page and line reference also.

When you take this approach, the facts found in each document will be listed at the proper point in the overall story of the case, rather than being trapped within a document summary. And anytime you want to get a summary of the facts found in a particular document, you can quickly filter the chronology down to facts coming from that source.

Define Fact Broadly

Include prospective facts and disputed facts in your chronology.

Some chronologies exclude facts for which a court-acceptable source has yet to be developed. Others exclude facts that are disputed. Both tactics are a mistake.

If you don't enter a fact into your chronology because it's disputed or because you have yet to develop a court-acceptable source for it, what's the result? First, you're turning yourself from a thinker of immeasurable value into a $100 disk drive. You end up having to memorize all of these prospective facts. Second, you're losing an important benefit of your chronology—helping focus your discovery efforts. Facts without court-acceptable sources are opportunities. Capture these potential facts in your chronology and brainstorm about the witnesses and documents that might prove to be sources. List the probable sources in your chronology's Source(s) column. Then put your chronology to work. For example, when you prepare for a witness's deposition, filter the chronology down to those facts you were hoping to source from this individual, and develop a line of questioning that will elicit the facts in response.

Limiting the type of facts that are entered in a chronology is a vestige of using word-processing software to create chrons. With a word-processor, once a disputed fact or a fact without a source has been entered, there's no convenient way to get it out of your report when you want a pristine list of undisputed facts for use with motions for summary judgment and pre-trial motions. However, if you're following my advice to create your chronology using database software, limiting your report to just undisputed facts or just facts that have sources is simply a matter of filtering your chronology using these criteria.

Here's another type of fact you should be sure to get into your chron: facts for which dates are inappropriate (e.g., the statement "smoking causes cancer" is a fact—though a disputed one—for which a date value is inappropriate). The term "chronology" suggests one should include only those facts that have associated dates. Don't let semantics restrict your thinking. A good chronology is much more than a diary of events. It is really a knowledge base of facts. All critical facts, including those for which dates are not applicable, should be included. (When you list facts for which a date value is inappropriate, consider entering "Not Applicable" or "N/A" as the value in the Date column. Thus, when you sort the chronology, all facts for which a date is inappropriate will be grouped together.)

Get Stupid

Move everything you know about a fact and its implications from your head into the chronology.

When you enter a fact into your chronology, make sure you get stupid about it. In other words, empty your head of all knowledge regarding it. Your chronology should be a memory replacement, not a memory jogger. If you don't get the complete fact into the chronology, you fail to clear your head of the minutiae so that you can focus on thinking. And you derail the communication benefits chronologies offer. If a critical part of the meaning of the fact is still hidden in your head, others on the trial team won't know about it when they read the chronology.

Every time you enter a fact into your chronology, pause and read it before you continue. Put yourself in the shoes of someone who doesn't know the case—say a new member of the trial team reading the chronology for the first time. Does what you've written represent your total knowledge regarding the fact? If not, edit the fact. While you're at it, ask yourself, "So what?" Does what you've written make the implications of the fact clear? If not, edit the fact. Further, if there isn't much of an answer to the So What question, give the fact a good once over, and make sure it belongs in the chronology in the first place.

Make Depo Summaries Obsolete

Use your chronology in lieu of separate deposition summaries.

When you create a deposition summary, you're digesting the deposition down to its critical elements, i.e., to the critical facts found in it. If you follow the traditional path of creating a series of separate deposition summaries, the result is unsatisfactory. You end up with a separate story for each witness, rather than one complete story interlacing the facts found in various depositions and in other sources.

Stop creating deposition summaries, and use your chronology instead. Enter into your chronology the critical facts you develop from reading a deposition. In the chronology's Source(s) column, list the deposition's name, as well as the volume, page and line number where the fact was found. Anytime you want a summary of a particular witness's deposition, filter the chronology down to just those facts that were sourced from a particular deposition.

Even if you use transcript search software, you should still enter in your chronology the key facts that occur to you as you read the deposition online. Transcript search software makes it easy to find the needles in the haystack of deposition transcripts and document OCR-text files. However, once you find a needle, doesn't it make sense to get it out of the haystack?

You may have other documents besides deposition summaries where you're storing facts. Consider replacing all of these separate containers with your one master chronology. Instead of searching multiple places for critical case knowledge, you will always have the case facts at your fingertips.

Avoid the AKA Headache

Refer to one person, organization, or document by one name.

Want to filter your chronology down to just those facts about a particular witness, organization or document? Even if you're using a database program to develop your chronology, you've got a big problem if the same thing is referenced by different names. You first have to identify all of the different name permutations. Then you have to create a compound query that will find any fact that contains one of these possibilities. What should be accomplished in an instant becomes an hour-long chore.

It's easy to end up with inconsistent naming. Suppose you're working up a medical malpractice case that involves Hyde Memorial Hospital. Unless you're careful, you're likely to have facts that refer to Hyde, Hyde Memorial, HMH, HM Hospital, and Hyde Memorial Hospital, among other possible variations.

The solution: develop a cast of characters list and establish a single alias or nickname to be used for each key player in the case. Typically, it makes sense to pick something short (e.g., for Hyde Memorial Hospital, HMH is probably the best choice). If you do, you save keystrokes in addition to gaining consistency.

Distribute the cast of characters report to the trial team. Ask that everyone working on the chronology use this dictionary if they are unsure of the proper name to use for a particular person, organization, or document. Naming consistency requires a little more work up front, but it quickly delivers a handsome return.

Use Fuzzy Dates

If possible, substitute question marks for portions of a date of which you're unsure.

As you build a chronology, you'll find yourself with many facts for which you have incomplete date information. For example, you may know that a meeting took place in March of 1999, but have no idea as to the day within March. Or you may know that a contract was signed sometime in 1998, but have no idea of the month or day. And you may know the accident took place in the 7 o'clock hour, but not know the minute or second.

What's the best way to deal with this problem when entering dates? Make it your practice to substitute a question mark for the portion of the date or time of which you're unsure. Using this simple tactic: March of 1999 becomes 3/?/99, sometime in 1998 becomes ?/?/98, and sometime in the 7 o'clock hour becomes 7:??.

We call this practice "fuzzy dating." Fuzzy dating allows you to capture what you do know about a date and makes what you don't know explicit. Fuzzy dating makes it easy to identify facts needing date research. When you obtain better information, you can return to the fact and update its date and time value.

Fuzzy dating is effective if you're working up your chronology in a word-processor or with some litigation-specific database packages. However, many database packages do not permit you to enter any date value other than a complete one.

Off-the-shelf database products are designed for generalized use and not with the realities of litigation in mind. These products attempt to help you by validating your date entry. Unfortunately, these validation routines backfire when you don't know the complete date. Enter 3/?/99 into a date field in Microsoft® Access®, and it will give you an error message every time. If the database software you're using only supports complete dates, you have at least a couple of alternatives: (1) When you don't have complete date information, you can leave the date cell blank and (2) you can assign an approximate complete date (e.g., the fact we know happened sometime in March could be dated 3/1/99). Both solutions have obvious downsides. The lesser of evils depends on your circumstances.

Not all facts are created equal. Some are critical; others are trivial. Some are great; and, unfortunately, others stink. To get the most out of your chronology, you should rate each fact in terms of criticality and goodness/badness.

Indicate Disputed Status

Each fact should be flagged as being disputed or undisputed.

I've already argued that your chronology should include disputed facts. If your chronology contains a mixture of disputed and undisputed items, it makes good sense to create a column which indicates whether a given fact is undisputed or disputed, and if so, by which party. Consider titling your column Disputed Status and using these values: Disputed by Opposition, Disputed by Us, Undisputed, Unsure. (If you're working on a case with more than two parties, revise the options to whatever you deem appropriate, however, you will probably find that having an option for all possible permutations is overkill.)

Once you've marked facts as being disputed or undisputed, your chronology becomes a tremendous aid in the preparation of motions for summary judgment and pre-trial motions. For example, instead of creating a last-minute list of facts to which you are willing to stipulate, you simply filter your chronology down to the undisputed items and print. If you've begun your chronology early in case preparation, you can use this information to organize your examination of adverse witnesses. Filter the chronology down to those items that you expect to be disputed and see if you can obtain admissions regarding them during depositions or find sources for them in documents.

Show Issue Relationships

To create a great chronology, you need issues as well as facts.

The vast majority of cases involve multiple issues. Assessing the strength or weakness of your case is really an exercise in assessing your strength or weakness in relation to each of the issues in it. Here again, your chronology should be an important aid.

Develop a list of case issues (perhaps with the aid of a brainstorming session if you're one member of a trial team). Don't limit your thinking to those issues tied directly to some legal claim. Include any topic that might influence juror thinking. For example, if you are working for the defense in a products case, you might want to include this issue: The Plaintiff Is Motivated by Greed, Not a Desire for Justice. Even though you would never make such an argument explicitly, it would be interesting to see what facts point to plaintiff greed, allowing jurors to reach such a conclusion on their own.

Now add another column to your chronology: Related Issues. In this column, name the issue or issues on which each fact bears. You can capture issue relationships as you first enter the facts. Another alternative is to forego entering this information initially and ripple through the chronology at a later point focusing on issue analysis.

Establishing relationships between facts and issues is also a logical place to parse work among members of the trial team. Junior members of the team can cull facts from documents and depositions. Senior members of the team can make links between facts and issues.

Creating links between facts and issues makes it easy to print chronologies of just those facts that relate to a particular issue —a capability that has great value when you analyze your case and develop strategy.

Take an Issue-Driven Approach

Use your issue list to ensure you have a complete chronology and to generate a fact "wish list."

As you develop your chronology, consider taking a "topdown" or "issue-driven" approach to your case. As case preparation begins, and one or two times a year thereafter, conduct a brainstorming session in which you think about your facts on an issue-by-issue basis.

Prepare by printing for each issue a mini-chronology of the facts that bear on it. Begin the brainstorming session by reviewing the chronology of facts related to the first issue in your issue list. Then set the list of facts aside, and think about other facts of which you're aware that bear on this issue. Enter these additional items into your chron. Next, think about the facts you wish you had for this issue. If you think there's any chance of developing such a fact, enter it in the chronology and list any potential sources that come to mind. Repeat this process for each issue in the case.

In the early days of a case, this issue-driven brainstorming process can be an invaluable aid in organizing discovery. As the case matures, it becomes a great way to reflect on case strengths and weaknesses and develop strategies in light of them.

Evaluate Each Fact

Separate the sheep facts from the goat facts.

Not all facts are created equal. Some are critical; others are trivial. Some are great; and, unfortunately, others stink. To get the most out of your chronology, you should rate each fact in terms of criticality and goodness/badness. Once this is done, you can filter the chronology down from all facts to just those facts that are critical or just those facts that are particularly good or bad.

One solution is to use two columns to capture evaluation information: one for criticality and another for goodness v. badness. A simpler method is to fuse both criticality and goodness/badness criteria into a single scale. For example, if you're using database software, you could create a pick list with the following values: Heavily For Us, For Us, Neutral, Against Us, Heavily Against Us. When you evaluate something as being heavily for you or heavily against you, you are indicating that it is critical. (The downside of the single scale solution is that it makes it difficult to evaluate those facts that are critical but are neutral in terms of goodness/badness. However, the reduced work of the single column probably outweighs this shortcoming.)

If multiple litigators are collaborating on a case, consider creating an evaluation column for each. Each individual can make their own assessment, and your software can isolate those facts where evaluations vary widely.

If you want, you can skip evaluating facts when you're first entering them into the chronology. Later, at an appropriate point, ripple through the chronology and evaluate the facts in one sweep. Here is another place where the work of maintaining the chronology can be distributed to various members of the trial team. Junior members of the team can enter the facts. Senior members of the team can evaluate them.

Put Your Chronology to Work

Use your case chronology in practical ways.

Your chronology should be far more than a thinking tool. It should be a practical aid in communicating about your case with your client, the opposition, and the trier of fact.

Use your chronology to communicate with your client. Send your client the chronology on a regular basis, perhaps quarterly. If you are using database software that stamps each fact with the date when it's entered into the chronology, have the software mark with an icon each fact that was entered since you last sent your client the chronology. By tagging new facts in this way, the report will give your client the complete story of the case, but it will be easy for them to focus on the new evidence.

Use your chronology at settlement conferences. Show opposition counsel and their client why the facts back your view of the case. Show them that you're organized and will be a formidable opponent if they choose to be unreasonable. (Obviously, before you print your chronology for use during a settlement conference, you'll hide columns such as Evaluation.)

Use your chronology to make a powerful case to judge and jury. Chronologies are great tools for educating the jury during opening statement and for illustrating your arguments during closing.

You can even use chronologies to expedite the development of your new associates' case analysis skills. The day they arrive at the firm, assign each new associate to one or more cases, and make them responsible for developing a chronology for each. At set intervals (once a month?), have each associate submit a chronology that contains just the new facts they have entered. Critique the verbiage used to describe each fact, their determination of whether the fact is disputed or undisputed, their evaluation, and their analysis of the issues on which the fact bears.

Summary

A chronology has the potential to be a tremendous aid as you organize and explore case knowledge. If you adopt the practices outlined above, I believe you'll realize this potential in full. I would appreciate your feedback. Please contact me at greg.krehel@lexisnexis.com.

About the Author

Greg Krehel is a co-founder of CaseSoft, now part of the LexisNexis® Litigation Services family. Prior to launching CaseSoft, he spent 15 years managing trial consulting firms that offered jury research and demonstrative evidence preparation services.

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