

THE ESSENTIAL GUIDE TO PREPARING YOUR CASE FOR TRIAL, HEARING, OR ARBITRATION

How to Build Effective, Winning Arguments



**BEST
PRACTICE
GUIDE**

WRITTEN BY THE CLIENT SUCCESS TEAM AT NEXTPOINT

THE ESSENTIAL GUIDE TO PREPARING YOUR CASE FOR TRIAL, HEARING, OR ARBITRATION

*Assembling and Presenting Evidence
to Build Effective, Winning Arguments*

SET YOURSELF UP FOR SUCCESS

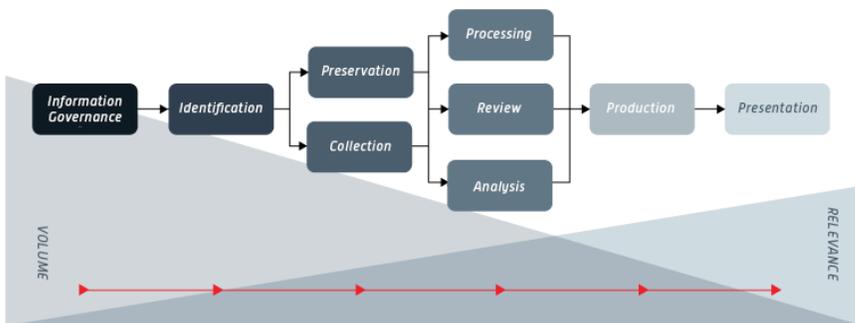
INTRODUCTION

In popular culture, a trial often hinges on a single moment – an accidental admission of guilt or sudden epiphany from a budding lawyer. But when a matter heads to a final arbiter in the real world, a legal team will have spent months or even years planning and preparing. Almost nothing in a trial, hearing, or arbitration should be left to chance.

This guide gives an overview of the case preparation strategies we recommend for our clients when managing modern litigation. To begin, let's step back and look at where case preparation fits into the larger picture.

★ THE EDISCOVERY FINALE

In our [Guidebook series](#), we have relied on the Electronic Discovery Reference Model (EDRM), which features nine distinct ediscovery stages. **Presentation, the final stage, centers on building and presenting an argument based on the produced evidence.**



A well-presented case tells a story. A judge, jury or panel should be able to understand your story in a few sentences. It is the task of your trial counsel to prove that story. Just like a good novel, consider the conflicts, rising action and main characters, then lead the audience to a logical conclusion.

Although presentation is the final stage, you should plan for its execution from the beginning. As you review documents for relevancy, start to think about the story you will build. The goal is to narrow down the universe of documents so that you're ready to focus on the exhibits most meaningful to your story when you transition to case prep and presentation.

Firms with well-oiled ediscovery workflows will move documents into their litigation databases as soon as they are produced. This allows their trial team to immediately prepare for depositions or even begin creating presentation slides and graphics. As they begin taking depositions, it will be easier to see how witnesses relate to each other and if they tell a consistent story.

Of course, many of the phases of discovery and trial preparation bleed into each other. Review is an ongoing process, and most discovery is done on a rolling basis. You will likely continue to produce evidence even as you start

to take depositions and begin preparing your case timeline. You will need to have a structured process but remain flexible if new evidence or information emerges late in the review process.

Communication is Key

Early and effective communication is a key step in preventing speed bumps later on. You'll develop ESI protocols to be negotiated and agreed upon with opposing counsel at your Meet & Confer. These protocols will be your road map for dealing with evidence throughout the case. It's important to lay out the finer details:

- *How will you exchange documents with opposing counsel? Via hard drive, an external file share site, or printed copies? What are the desired file formats?*
- *What data should be included with the productions? The more metadata you receive with the documents, the easier it will be to review and analyze them.*
- *How will you work with experts and witnesses? Will you send them PDFs of testimony and evidence, or will they have access to an online repository?*
- *If you use a review platform, who can have access to it and what should they be allowed to access?*

★ LEAN ON SOFTWARE FOR ORGANIZING EXHIBITS

Perhaps the most important “blocking and tackling” decision is how you will execute exhibit stamping so that your files and exhibits are organized and coordinated. Should you use old-school exhibit stamps or apply them with an online tool?

Evaluate your current resources and consider whether the case merits investing in a new tool. Perhaps you successfully used Adobe Acrobat for exhibit stamping in the past, but now you suddenly find yourself faced with hundreds of new exhibits to stamp on a tight deadline. Comprehensive litigation software like Nextpoint will speed up this process and improve efficiency in your trial preparation.

Prepare the Hot Docs

“Hot docs” are the critical documents that will eventually end up attached to filings, blown up and used as exhibits, or endlessly picked apart in depositions. During review, utilize a well-designed coding layout to easily tag and identify these documents as you build your case.

As you organize exhibits, remember to keep your established ESI protocols in mind so that you're ready for a smooth production and file exchange process when the time comes.

BUILDING YOUR CASE

★ TELL A COMPELLING STORY

The base of your story will consist of three key components: the *who*, *what* and *when*. First, determine the *what* – the key issues and themes at stake in your case. The next step is understanding the *when* and building a timeline. A clear story depends on a cohesive chronology, so this timeline should become the backbone of your final presentation. Finally, dive into the *who* – the cast of characters and key players significant to your story.



Litigation software like Nextpoint will help you find patterns and analyze the issues, events and characters in your story. Tag and annotate documents with notes relating to key themes. Use metadata to filter evidence by date and determine the central points in your timeline. Build witness folders, prepare for depositions, and tag transcripts with notes to keep track of the characters in your case and analyze their relationships.

★ TAKING DEPOSITIONS

Depositions are a key component of any litigation, and since they are often conducted with time constraints, proper preparation is essential. Unfortunately, the [deposition process](#) is often left to the last minute because review teams are struggling to finish combing through documentary evidence.

Take note of potential deponents and relevant questions during the document review stage. You have freedom to improvise as new information comes to light, so start building a plan and remain flexible as you uncover new evidence.

Test Your Strategy

For important cases, you can employ mock trials and case issue focus groups to gain insight on the strength of your argument. When deciding whether to end with a settlement or continue to trial, you can use a focus group to learn how much money a jury would likely award the plaintiff, which will help you make the best financial choice for your client.

Mock trials are also a good tool for testing different theories and evidence to get feedback on which approach works best. As you observe the focus group's deliberations, you'll better understand why a jury might find certain strategies more persuasive. And of course, it's always helpful to gain more practice presenting your case, since many attorneys rarely get experience actually arguing in the courtroom.

Identifying key deposition materials for your team in a timely manner can radically change the course of litigation.

When you go into a deposition, know the facts of your case to the extent possible. Know the claims. Know the law and the objections that can be raised by opposing counsel. Be sure to bring copies of your deposition exhibits for everyone in the room.

After you take depositions, you can use software like Nextpoint to code transcripts with metadata and add searchable fields. By utilizing a secure, online repository, you can organize the database to share notes and highlights with your team.

PREPARE WITNESSES FOR TRIAL

Witnesses and evidence are the two major pillars that contribute to a winning case. Preparing your witnesses is imperative to obtaining strong testimony that will lead to a favorable decision. Compile any exhibits relevant to the witness so they can review them ahead of time. Highlight and make notes on important information to emphasize key takeaways from the exhibit.

If your witness has done any prior depositions, have them watch clips so they can see areas for improvement and give a more polished testimony. You can also walk witnesses through a courtroom simulation to help them achieve the confidence to appear comfortable and credible in court.

PRESENTING YOUR ARGUMENT

CHOOSE THE RIGHT TOOLS TO DISPLAY EVIDENCE

The choices you make during trial prep will influence what you can achieve when you finally reach the courtroom. If you used Adobe Acrobat for exhibit stamping, you might decide to use it to present documents as well. While Acrobat is a competent PDF software, it doesn't offer features specifically designed for trial presentation.

Platforms like Nextpoint and Trial Director, on the other hand, provide tools to help you seamlessly break down complex documents during your presentation. Simply type an Exhibit or Bates Number and instantly display that document on a large screen. Then, create document callouts in real time by magnifying key sections and highlighting relevant text.

In addition to using software to present documents on a courtroom monitor, you can also create a mixed media presentation with large format boards and enlargements for added impact. With physical presentations like these, you can emphasize hot documents and include compelling timelines and graphs.

Binders compiled with paper printouts of key exhibits may be another effective method for presenting your case. This may be especially efficient in an arbitration where your audience is small and can each be given a copy to review by hand.

★ SHOW, DON'T TELL

Sometimes, lawyers talk too much. Or, to put it more gently, attorneys rely too heavily on verbal communication and under-utilize visual communications. [A recent study](#) found that 65% of the general population prefers to learn from visual information, while only 47% of attorneys communicate with the help of visual tools.



When shown too much information on a slide, our minds go into overdrive trying to reconcile the spoken word with the content on the slide. Your slides should show - not tell - your story. Bullet points should be descriptive but succinct, and your timeline should be clear and easy to understand. Use charts, quotes and images to draw the viewer in and tell your story.

What types of imagery should you use?

- **Document callouts** bring the most pertinent information to the center of your audience's attention and ensure they aren't distracted by irrelevant text on the screen.

Plan Ahead for a Visual Narrative

Start taking note of themes that could lead to strong visuals as you develop your story and organize your argument. When you read a compelling line in a document, think about using it as a callout. If various locations crop up in your research, compile a list that could lead to an interactive map. Jot down any complex terms or concepts that you may need to break down for the jury to understand your argument.

- When referencing prior testimony and depositions, include a **photo of the witness** so your audience can distinguish your cast of characters.
- Demonstrative graphics:
 - **Timelines** are a strong tool for demonstrating the chronology of your story.
 - **Graphs** serve as compelling visuals in data-heavy cases.
 - **Maps** are helpful when various locations play a key role in your argument.
- **3D animations** can demonstrate how an object works or how it was built, which is especially useful in patent and product liability cases.
- You can also create **interactive tutorials and narrations**. The judge can go through these outside the courtroom and take time to understand complex concepts.

With simple animation, you can control which information your audience sees as you present these graphics. For example, when going through the events on a timeline, you can make them appear one at a time, so that listeners won't read ahead and lose focus on what you're saying.

Above all, keep your presentation simple. Even if you uncover a mountain of damning evidence, your job in presenting your case is to tell a simple and clear story. When presenting, don't overwhelm your audience and don't die by bullet point. The less clutter on a slide, the more memorable your language and imagery, the more powerful the message will be.

★ **UTILIZE VIDEO DEPOSITION CLIPS**

Some circumstances merit the use of video depositions in lieu of live witness testimony. When a witness has a small role in the case, you may choose to use video rather than require them to attend the trial. Video is also useful when sudden conflicts or illness prevent a witness from testifying in person.



Video clips can come in handy when the witness is present in the courtroom as well. If any of the live testimony contradicts the deposition, videos can provide the grounds for witness impeachment. Videos also bring out the human angle that cannot be seen in a written transcript. Perhaps the witness states consistent facts, but their demeanor changes entirely between the deposition and the trial. With video, the audience can observe body language, mannerisms, and other expressions, which can affect their perception of the testimony.

★ BRING TECH SUPPORT

Before you enter the courtroom, you should decide who will run the presentation. It may be helpful to have someone there as tech support to make sure everything runs smoothly. It can be distracting to worry about setting up the presentation technology or troubleshooting if something goes wrong.



Some attorneys are comfortable managing their presentation with minimal assistance, which can show that they are adept and know their case well. However, if you're not 100% confident in your ability to present your argument while handling the technical aspects, don't hesitate to bring in help. As an attorney, winning the case should be your primary focus.

A paralegal or other member of your team can assist you in the courtroom, or you can hire an outside consultant. (In addition to our software, Nextpoint offers a range of litigation services, including trial presentation support.) If you've used a videographer from a court reporting firm, they may also be able to provide support during the trial.

You should also make sure you have the right equipment for your presentation. Pay a visit to the courtroom to ensure your equipment will fit well in the available space, and visit the tech support experts to find out if they will assist in setting up the equipment.

Final Checklist

HOW WILL YOU STAMP EXHIBITS?

- Electronically
- Old school stickers
- Per page stamping

HOW WILL YOU EXCHANGE EXHIBITS WITH OPPOSING COUNSEL?

- Hard drive
- External file share site

HOW WILL YOU DISPLAY EXHIBITS IN COURT?

- Adobe Acrobat
- Trial presentation software
- Paper printouts/binders
- Large format boards/enlargements
- Video depositions

WHO WILL RUN YOUR PRESENTATION?

- Each attorney individually
- Trial team member
- Professional consultant

WHAT TYPES OF VISUALS WILL YOU USE?

- Document callouts
- Photographs
- Timelines
- Graphs
- Maps
- Animations
- Interactive tutorials and narrations

WRAPPING UP THE CASE

★ A FINAL ARGUMENT

At the conclusion of the proceeding, you will typically submit a brief that summarizes your argument. Essentially, this means writing a winning opinion for your case in the hopes that the judge chooses yours. Be sure to hyperlink to your exhibits electronically so they're easy to access. Your goal is to make it as simple as possible for the judge to rule in your favor.

★ POST-TRIAL REFLECTION

Post-trial interviews with jurors can help you understand the reasoning behind their verdict and their thought process throughout the case. Which strategies worked, and which were ineffective? What was missing from your case that

might have made a difference? Which exhibits and witnesses made the strongest impact? You can gain insight on questions like these and implement the lessons in future case prep.

If you win the case but an appeal seems likely, post-trial interviews can show you which arguments and evidence you should build upon and any weak spots that need improvement. They're also particularly helpful if your client repeatedly deals with litigation on a recurring issue.

*** GOING FOR THE WIN**

If you begin preparing for trial presentation in the early stages of discovery, building and presenting your case should be a smooth process. You may not end up in the courtroom, but if your strategy is solely geared toward reaching a settlement or mediation, you could find yourself with a looming trial and a case full of holes.

As you move through the litigation process, always keep this question in mind: how can I tell a clear, compelling story with strong visuals? If you work toward this goal, your argument will have a high probability of succeeding with any jury, judge or arbitration panel.

*** ADDITIONAL RESOURCES**

**BILLING FOR
EDISCOVERY**

Fully recover costs and meet ABA standards

[DOWNLOAD PDF](#)





NEXTPOINT 2022 LITIGATION SUPPORT SERVICES

Nextpoint is a recognized leader in innovative and dependable litigation support services. Founded in 2001, the company boasts an impressive pedigree, having supported legal teams of all sizes in highly complex matters for over two decades. A dedication to top-flight, responsive service makes Nextpoint the trial support choice for a roster of the nation's leading corporations and law firms.

Nextpoint lets you focus on what you do best: practice law

Nextpoint improves the level of trial advocacy by streamlining a bevy of technical, logistical and mechanical tasks necessary to successfully argue a case. We have particular expertise in technology planning and design and production of trial demonstratives.

REPRESENTATIVE ENGAGEMENTS

In addition to working with your firm on several matters, our representative corporate clients include Philip Morris, Amgen, Pfizer, Teva Pharmaceutical, and Hyundai. Representative law firm engagements include Winston & Strawn, Bartlit Beck, McDermott, Will & Emery and Kellogg Huber.

Representative engagements include:

- Winston & Strawn: U.S. v. George H. Ryan, former Governor of Illinois, Northern District of IL
- Shearman & Sterling: U.S. v. Razmilovic, et. al. (former Symbol Technologies executives), Eastern District of NY
- Kirkland & Ellis: Coleman, Inc. (Ron Perelman) v. Morgan Stanley, Circuit Court, Palm Beach, FL
- Winston & Strawn: Verizon v. Vonage, Eastern District of VA
- McDermott, Will & Emery: In Re IKO Roofing Shingle Products Liability Litigation, Central District of IL
- Pfizer: In Re Bextra/Celebrex, Multidistrict Litigation
- Teva Pharmaceutical: Gabapentin Patent Litigation, District of NJ
- Philip Morris: U.S. v. Engel Progeny cases (over 3,000 filed in multiple FL jurisdictions)
- Bartlit Beck: National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling
- Dickstein Shapiro: Bruce Saffran, MD v. Johnson & Johnson

PROVEN CREATIVE PROCESS

Nextpoint has vital experience in developing, designing, and producing high-impact trial demonstratives. Through a consistent and repeatable process, Nextpoint creative support teams are able to turn out high quality, persuasive, and technically accurate demonstratives in high-pressure settings.

We help you make your case with:

- Opening/Closing statement development
- Technology tutorial development
- Main expert witness development
- Supporting expert witness development
- Custom information graphics, animations, and 3D rendering

STREAMLINED COORDINATION

Nextpoint can provide a support infrastructure to coordinate across the entire range of trial preparation activities.

- Development of exhibit lists
- Exhibit objection tracking for both defendant's and plaintiff's objections
- Electronic exhibit sticker application
- Courtroom database development and individual witness support
- Creative and video services
- Advanced data manipulation and management
- Software/Hardware training and quality assurance
- Remote and/or on-site graphic and technology support for trials

EVIDENCE PREPARATION TECHNOLOGY

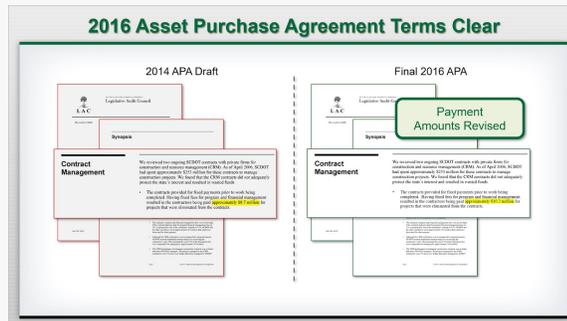
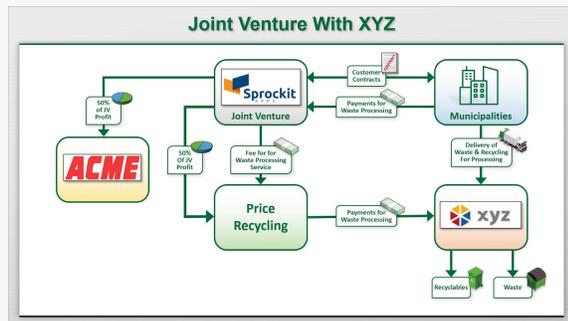
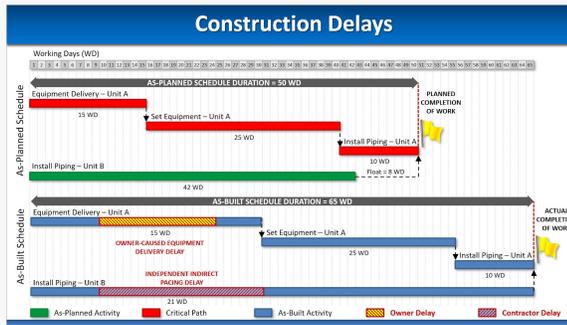
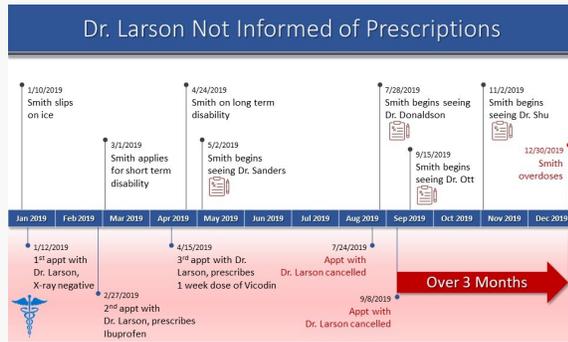
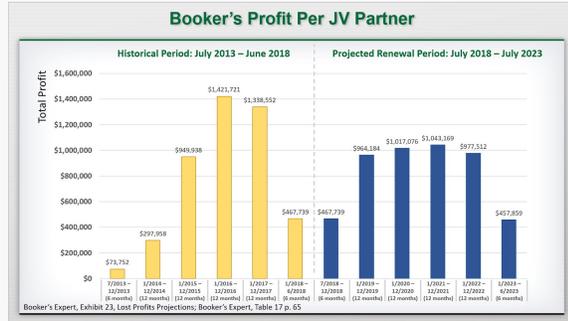
Nextpoint's patented software platform delivers unprecedented trial or hearing preparation functionality onto every computer of the trial team.

Highly secure, collaborative, and tablet enabled, Nextpoint is the premier evidence preparation technology on the market. Featuring support for multiple platforms and devices, including Apple iPad and Mac OS, attorneys are provided with complete command of the evidence in their trial.

Reuters also profiled our work on the Conrad Black trial.

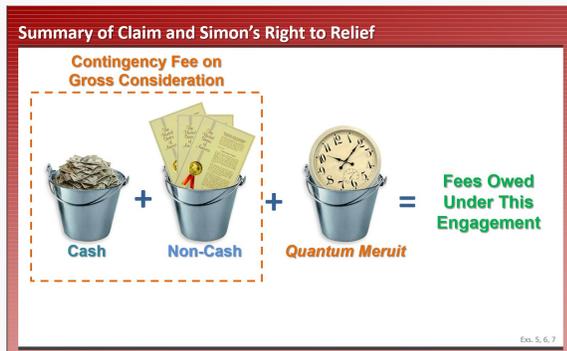
“ **NEXTPOINT** created a searchable database from millions of pages of evidence ahead of Black's trial. With help from a Nextpoint technician, lawyers in the federal courtroom were quickly able to search and retrieve documents, display key passages of text on a viewing screen—even quietly strategize as testimony was unfolding.”

REPRESENTATIVE CREATIVE EXAMPLES



Dr. Hall's Comparison of Market Share

	NIKE	lululemon	FABLETICS	adidas
Percentage of Sales by Sport	Running 22%, Soccer 26%, Golf 4%, Other 3%	Running 20%, Golf 4%, Soccer 2%	Running 37%, Golf 11%, Soccer 2%	Running 18%, Soccer 43%, Golf 22%, Other 1%
2019 Geographic Exposure	NA 7%, Asia 34%, Europe 58%	NA 2%, Asia 22%, Europe 76%	NA 3%, Asia 25%, Europe 72%	NA 13%, Asia 39%, Europe 48%
Enterprise Value	\$2,538	\$682	\$518	\$1,892
EV/EBITDA	*	3.9x	2.7x	6.9x
EV/EBITDA	*	4.0x	3.2x	7.2x



SUPPORT STAFFING

The Nextpoint team supports your data throughout the entire litigation lifecycle. We can provide trial support staffing remotely or within your law firm, on-site in trial situations, and in the courtroom through our network of proven professionals:

- Technology Consultants
- Technology Associates
- Creative Directors
- Graphic Designers
- Hot Seat Personnel

CONTACT US:

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trial-services@nextpoint.com

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About Nextpoint

Nextpoint delivers transformative software and services for all law-kind.

Our award-winning team is 100% focused on making it simple, fluid, and affordable for law firms of all sizes to win the day, with streamlined ediscovery workflows, simplified case management, and best-in-class security at every point.

More enlightened technology

Our secure, cloud-based solution lets your team begin document review in minutes with powerful data analytics tools, a user-friendly interface and collaborative access from anywhere. Innovative case prep and presentation features will exceed your expectations of what smart eLaw software can do.

Stop paying for ediscovery data

Nextpoint users get free, unlimited data hosting, OCR, imaging and productions. With increasing pressure to control costs, it's a predictably affordable solution to protect your data, your case, and your reputation.

Founded in Chicago in 2001, Nextpoint continues to push the industry forward with unlimited data, world-class innovation, and expert services.

Welcome to eLaw the way it should be.

Learn more about Nextpoint

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