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Document Review: Using the Entire Toolbox

by Graham Rollins

Each year, at LEGALTECH, ILTA, and other e-discovery tradeshows, software and hardware developers unveil their latest technical wonders to help bring data volumes and costs under control in the face of continuously increasing amounts of electronically stored information. Among the latest trends are more capable Early Case Assessment tools and impressively effective predictive or automated coding systems. These tools and those that came before (like concept searching, conversation mapping, email threading, near-duplicate identification, de-duplication, deNISTing, and even the simple keyword search) provide means to organize, accelerate, and/or limit human review of documents, which is usually the most costly part of discovery.

While LeClairRyan's Discovery Solutions Practice (DSP) carries all these technical marvels in its e-discovery services toolbox, it has not, like the master house builder, tossed out its trusty framing hammer just because it has purchased the latest pneumatic or powder-actuated nail cannon. Sometimes, depending on the nature of the case and the client's cost and risk tolerances, the older tools are the right ones for the job.

Large vs. Small Reviews

In large-scale cases involving paper and electronic documents, an e-discovery provider's instinct is to (1) find an electronic document review platform with appropriate features; (2) scan and bibliographically code the paper documents; and (3) process the electronic documents for a combined whiz-bang analytics approach that culls the corpus down and enables a high-speed attorney review of the remainder. In these large-scale cases, especially if the value of the case is high, the costs associated with this approach are typically acceptable.

Large-scale reviews frequently lend themselves to the question of when the latest tools, such as predictive and automatic document coding, should be deployed. While these tools can provide cost-effective solutions to the problems frequently associated with large-

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Meet DSP

Dana Fischer's Client Relationships Outdate e-Discovery Technology

Dana Fischer began her career more than 16 years ago as a traditional paralegal at Wright Robinson, Osthimer and Tatum, a national law firm that merged with LeClairRyan in June 2008. Ironically, her first assignment at her new job with LeClairRyan's Discovery Solutions Practice (DSP) was working on a very nontraditional e-discovery project. She describes her first experience with e-discovery as working on "ancient computers with black screens and yellow text." While the technology has changed considerably since that first project, her relationship with that Fortune 500 client continues to this day.

scale document reviews, they often require someone who is extremely knowledgeable of the case to program a software application to review the documents.

Alternatively consider, for a moment, a smaller review of several dozen boxes of paper documents. Manual paper review in the age of nascent artificial intelligence coding seems anachronistic, but in the right case it can be the best tool, even if it's the oldest one in the box. Reviewing paper documents in electronic format is a common practice; however, it introduces additional costs (in both time and dollars) related to scanning, bibliographic coding and data hosting.

A manual review, on the other hand, allows a team to begin work immediately. It also eliminates the costs associated with an electronic review and creates possibilities for file organization through the simple manual movement of files. In some cases, therefore, having the ability to conduct a well-organized, efficient paper review is an invaluable tool.

Potential Legal Hurdles

Evaluations of these technologies by TREC Legal Track, among others, indicate that these technologies are already on par with, if not surpassing, the accuracy of typical human review processes. The downside, however, is the risk that a court will find that using these tools is not a reasonable method of identifying responsive information and, worse, not a reasonable process by which to prevent the disclosure of privileged material. Regardless of the strength of the tool, whether to use it will depend on the jurisdiction, judge and specifics of the client's situation, including the risk the client is willing to assume in exchange for the cost savings.

Though newer technologies provide opportunities to quickly target relevant data for litigation, especially as volumes of data continue to grow, there will always be cases in which either the cost or risk of using those technologies will not seem justifiable to a client.

As e-discovery leaders, DSP professionals not only stay abreast of cutting-edge e-discovery tools, they also carry the trusty framing hammer and other older tools in their toolboxes. After all, one never knows when a vintage tool will be just what is needed to adapt a service solution to the needs of the case and client.

What's New at DSP

Patented Technology Revolutionizes How LeClairRyan Reviews Backup Tapes

For years, backup tapes have been the bane of e-discovery

Several years later, she led a team of paralegals responsible for answering discovery at the national level for asbestos litigation. That company later filed for bankruptcy on the same day Dana was leaving for vacation. She asked her boss to find her more work in the firm by the time she returned -- that work turned out to be another e-discovery project for the client with whom she had worked on her first project. Since that day, her work has focused primarily on e-discovery projects.

Dana provides continuity and consistency in the ever-changing world of e-discovery, and these traits have served her well. She has worked on some of DSP's largest projects and remained committed to the team from its infancy, through its growing pains, and now plays a critical role in the team's biggest successes.

Dana possesses an unparalleled historical knowledge of document review processes and values the importance of following procedures. To that end, she has been instrumental in revising and documenting processes to ensure DSP utilizes evolving technology and employs best practices. In addition, her long-term professional relationships with clients' employees and the trust she has earned are key factors when she is handling a company's sensitive information and collecting original documents from client facilities. Likewise, Dana's vendor relationships and experience administering a variety of document review databases facilitates timely and cost-efficient document reviews.

In her personal time, Dana enjoys classic cars, international travel, reading, and planting vegetable gardens in the summertime.

Learn more about DSP

professionals everywhere. Universally considered expensive and burdensome to access, courts and commentators alike have generally deemed backup tapes as inaccessible.

However, patented technology from a company called Index Engines (IE) has changed the way backup tapes are being perceived and used. IE technology makes a once cumbersome document review process fast and relatively inexpensive.

Previously, to obtain information from a backup tape, it was necessary to restore all the data on the tape to its original native environment. For email, this meant recreating the email environment as it existed when the backup tape was made. The same was true for other types of data.

Restoring the original environment often required the installation of new servers and reinstallation of software that was no longer used. Only after this was done could the data be collected in its native format, processed, and, finally, searched for relevant information.

New Possibilities
Through IE technology, it is possible to index a tape without restoring it, as the software is able to identify each file on a tape, catalog all the metadata and content, and allow searching and filtering without requiring files to be restored. The indexing speeds are on the order of multiple terabytes per hour, and the costs are often lower than those associated with collecting data from an active environment.

Recognizing the impact that this technology can have on its clients, LeClairRyan's Discovery Solutions Practice (DSP) has worked with IE to develop legally defensible processes through which it can leverage the technology effectively.

Many companies have large amounts of legacy backup tapes that are expensive to maintain, yet they have been unable to dispose of them because the cost of determining what information must be kept has been prohibitive. However, DSP is now able to leverage IE technology to quickly and inexpensively make reasonable, defensible disposition decisions about backup tapes, often netting a positive return on the client's investment.

Similarly, while the business disruption associated with data collection from dozens or even hundreds of employees and information systems for large-scale litigation can be crippling, DSP can now extract pertinent information from current and legacy backup tapes with minimal interference and, often, lower costs.

With the advent of revolutionary document review technology, backup tapes are now more likely to be dusted off and searched for potentially relevant information than ever before. Keeping pace with such rapidly changing procedures is critical for any enterprise's longevity, and LeClairRyan is leading the way by leveraging IE's cost-effective patented technology.

Additional Resources

"Managing Hidden Risk Associated with Legacy Data," DSP's latest white paper, explores ways companies can mitigate the legal risk and storage costs associated with backup tapes. For a copy, please contact Dennis Kiker .

On June 23, please join Dennis Kiker and Vikas Pall, of LeClairRyan, and Index Engines for a webinar on "Managing the Cost and Risk of Legacy Backup Tapes."

Click here if you are interested in attending this event.

CASE RESULTS DEPEND UPON A VARIETY OF FACTORS UNIQUE TO EACH CASE AND DO NOT GUARANTEE OR PREDICT A SIMILAR RESULT IN ANY FUTURE CASE

DSP Revamps Company's Discovery Response Program, Trains Key Players

As federal and state electronic discovery laws continue to evolve, organizations must remain diligent about the processes they use to identify, preserve and collect electronically stored information.

LeClairRyan's Discovery Solutions Practice (DSP) recently completed a discovery response project for a Fortune 500 company. The project included an assessment of the company's current processes and the development of a new end-to-end discovery response program. The company operates in a highly regulated and litigious industry and, therefore, is required to handle massive amounts of data in a diversified IT environment.

While the company already had a discovery response plan, it was simplistic, and neither widely adopted nor consistently executed. DSP's assessment of the existing discovery response plan revealed that the plan involved ad hoc identification practices, inconsistently documented preservation steps and overly broad collection methods. As a result, the company was exposed to excessive downstream cost and unnecessary risk.

DSP worked with legal, IT and other company stakeholders to develop and implement an efficient and organized discovery response program -- one that enables effective identification processes, targeted legal hold protocols and defensible collection procedures. To enhance the company's discovery response program, DSP:

1. Assessed the company's existing people, processes and technologies associated with discovery response, outlining existing gaps and identifying prioritized recommendations for

improvement

2. Re-engineered the program to include a detailed discovery response plan managed by a chartered discovery response team
3. Guided the development of a litigation data map, a sound legal hold management program, and an effective collection process that preserves document authenticity and chain of custody

Implementing Plan Key to Success

The company's new discovery response program allows the organization to implement consistent and legally defensible protocols, leveraging existing technologies and personnel to organize, automate and execute each discrete step involved in discovery response.

A discovery response plan is only helpful if it is properly implemented. Therefore, DSP also provided a full day of training for stakeholders and a two-day course for the key legal and IT employees responsible for implementing the plan. This training provided employees with the knowledge necessary to execute the discovery response plan correctly.

It is never too early to integrate a tailored discovery response plan into a company's business process. DSP has conducted assessments and implemented discovery response plans for dozens of organizations across industries and continues to refine and update its offerings as legal requirements evolve and new technologies emerge. Having a legally defensible discovery plan in place may be a deciding factor should a regulatory investigation or litigation ever arise.

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