NEWSLETTER   April 2011

The e-Discovery 4-1-1

A monthly publication of LeClairRyan's
Discovery Solutions Practice

LECLAIRRYAN

Legal Strategies. Business Solutions.

E-Discovery Technology: Are Humans Still Needed for Document Review?

by Daryl Shetterly

Since the industrial revolution, people have been saying that technology will fundamentally change our lives. And it has. This morning I woke up to the sound of an alarm clock in a house heated with electricity and drove to work in my car -- a drive made easier by bridges, traffic lights and, ultimately, a parking spot in a parking garage deep underground. At one time, each of these things was considered technology. There is no question that technology continues to evolve, and as it evolves, it will continue to change our lives.

As a lawyer who works in the area of e-discovery (which is, ironically, an area of the law that exists because of technology), I am focused on how technology can help us provide faster, higher quality services for clients at a lower cost. Across the continuum of e-discovery services known as the Electronic Discovery Reference Model, document review is perhaps the ripest place to leverage technology -- simply because it can be the most time intensive and, therefore, most expensive phase of the process.

Thus the question: do we still need humans to perform document review, or has technology advanced to the point of making human document reviewers obsolete?

A mere decade ago, document review evoked images of people sitting in dirty warehouses sifting through boxes while battling paper cuts and dust allergies. With the advent of email and other electronic documents, the primary focus of document review transitioned from paper to electronic data. At first, the shift to reviewing electronic data changed the medium, but did little to change document review methods. Document reviewers sat at computer terminals and looked through an email inbox chronologically -- similar to the way they previously would have flipped through a box of paper.

We have come a long way since then. There is now a myriad of technology tools available to locate and review relevant documents.

The e-Discovery Myth
READ OUR BLOG

Meet DSP

Capri Miller Brings Diverse Perspective to DSP

Capri Miller, an associate in LeClairRyan's Discovery Solutions Practice (DSP), has probably traveled further to get here than anyone else on the team. Over the years, Capri has lived in Idaho, Washington, Illinois, Massachusetts, California and Virginia, as well as Taipei, Taiwan, and Cairo, Egypt.

Here at DSP, Capri advises clients on e-discovery matters and litigation readiness. She collaborates with merits counsel and clients to provide cost-effective e-discovery solutions and coordinates the collection,

technology tools available to locate and review relevant documents more quickly. Some of the most commonly used tools are search terms, concept searching, email threading, predictive coding, de-duplication and near-duplicate identification.

But has technology replaced the need for people to sit at computer screens and review documents?

The short answer is "no" -- at least for today. Of course, this does not mean human reviewers must look at every electronic document collected as they may have in the earliest days of electronic discovery. Far from it. For the most part, the days of paying human review teams to look at irrelevant March Madness pools and office email banter are behind us.

Technology is a tool, and when placed in the right hands, it is quite effective at defensibly reducing the population of documents that need to be reviewed. In almost every case, however, there is still a subset of documents that human reviewers need to analyze, because even technology has its limits. Some tasks require human judgment. Given some level of human guidance, technology can separate documents that are likely to be relevant from those that are unlikely to be relevant. Further, technology can subdivide relevant documents into categories and stage the documents so rather than the review team looking at documents in chronological order, they are looking at email threads, sets of near duplicate documents or document clusters. This is where the work for the document review team begins.

As the review team digs into the subset of documents identified and organized through the use of technology, it identifies "hot" documents or email chains; merits and discovery counsel then challenge or confirm early assumptions and raise new issues in the litigation. The review team develops deposition preparation notebooks, timelines, memoranda and other documents to aid in litigation preparation. The team also identifies privileged documents, makes redactions and evaluates documents for confidentiality. I recently posted a blog article on LeClairRyan's **e-discovery blog** outlining the value a properly trained and managed document review team adds to the litigation team. In sum, technology and a human review team are complimentary.

As in other areas of our lives, technology allows the human document reviewer to work more efficiently. The business case for having people look at documents is greatest when the reviewers are focused on relevant documents and gathering information that (1) drives the theory of the case; (2) prepares the litigation team for depositions; and (3) ultimately identifies the crucial documents that inform settlement decisions or win the case. As one of my partners, Bill Belt, is fond of saying, "it will be a rough day when your opponent introduces a key document in a deposition, and the only 'person' that has seen that document is a computer."

review and production of paper and electronic documents. She also supervises review attorney teams to ensure discovery deadlines are met and assists trial counsel with case preparation. Her work also encompasses conducting client employee interviews, drafting and issuing document hold and preservation notices, and performing early case assessments. She has worked with pharmaceutical and financial services clients engaged in litigation, regulatory disputes and governmental investigations.

Prior to joining LeClairRyan, Capri clerked for the Honorable Herbert C. Gill, Jr., a Chesterfield County Circuit Court judge, during which time she focused on civil matters including family, insurance and personal injury law.

Outside of work, Capri enjoys volunteering for the Richmond Society for the Prevention of Cruelty to Animals and spending time with her adopted chocolate lab. She hopes to become more involved with pro bono work, particularly for unemployment appeals and immigrant outreach programs.

Learn more about DSP

As it has for centuries, technology continues to develop. The day may come when computers completely replace human document reviewers on e-discovery projects. In the meantime, however, DSP will continue to use technology to cut costs, gain efficiencies and increase quality. Who knows, the day may come when computers can draft newsletters, and I can pick up some of the hobbies I dropped when I started law school.

back to top

What's New at DSP

Work Space Consolidation Fosters Collaboration

Sometimes working differently really does mean working better. By optimizing its existing space to create a more collaborative working environment, LeClairRyan's Discovery Solutions Practice (DSP) has realized an improved level of work efficiency.

With so many talented and experienced e-discovery experts working in a space that facilitates communication, DSP is better leveraging its collective experience. Put simply, the greater the collaboration, the greater the success.

Part of that success has come in the form of enhanced creativity. In the last month, DSP professionals have generated some of their best ideas during day-to-day project management conversations in the new space. DSP strives to provide clients with the best and most economical approach to document production, and its consolidated work space is yet another way in which DSP is saving clients money. Welcome to the new DSP -- working smarter in a new, collaborative and cost-saving space.

back to top

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

Needs Assessment Vital Component of Vendor Selection Process

There is a dizzying array of technology tools available in the e-discovery marketplace. For those who do not live their days in the e-

discovery space, the vendor selection process can be quite perplexing. When selecting a tool, the goal is to balance cost with need -- no more or less.

LeClairRyan's Discovery Solutions Practice (DSP) recently worked with a client struggling to select the e-discovery tool that best fit its project. DSP professionals completed this task by (1) identifying the need and potential solutions and (2) ranking the solutions based on factors relevant to the project.

To truly understand the client's needs, it was important to identify functionality issues that may arise as the case evolves and build a most-likely case scenario. After this information was compiled, DSP ranked each requirement by order of importance and separated the "nice-to-haves" from the "must-haves." Lastly, DSP provided this information to the client with recommendations that took into account varying risk and cost tolerances.

Appling this information to its vendor selection process, the client was able to confidently select the tool that best fit the project and budget.

back to top

CALIFORNIA	MASSACHUSETTS	NEW JERSEY	PENNSYLVANIA
CONNECTICUT	MICHIGAN	NEW YORK	VIRGINIA	WASHINGTON, D.C.

WWW.LECLAIRRYAN.COM

To unsubscribe, please reply to this email with UNSUBSCRIBE in the subject line.