



## Smaller Budgets Alter Document Review

Law firms and companies focus on assessing total case costs

By LAURA KIBBE

At mid-year 2010, we can review what predicted trends in e-discovery actually came to pass and then focus on our prognostications for the balance of the year and heading into 2011.

For the most part, many of our predictions came true—most notably, there was a re-stimulation of legal matters following the 2009 quiet period, including litigation in mergers and acquisitions, government investigations, and other areas that also created corresponding gains in document review.

But perhaps the most important trend in e-discovery this year was the adoption of new technologies and processes that changed the way that document review is managed.

With dwindling budget allocations, practitioners are seeking overall case savings.

For in-house counsel and law firms trying to choose sustainable e-discovery project management approaches, the real trend lies in looking at e-discovery from a holistic point of view: What is the total case cost of any matter—with document review a large part of the budget—in both time and real dollars?

is includes both fees paid to a technology or document review partner, as well as legal fees associated with managing or supervising the discovery effort. Without understanding total case costs, you could be saving incrementally on one element and unwittingly increasing overall costs of the matter.

Even a few years ago, document review focused on brute force, linear review. Often

law firm associates did the entire review. More recently, firms began to outsource first pass review to contract personnel, either at a provider or in their own offices. Firm associates, however, then billed for second and third pass reviews.

Today, the volume of documents and the complexity of the cases has made this multi-pass approach impracticable both from a time and cost perspective. So, how do you measure total case costs and develop a cost-effective, defensible discovery strategy?

First, you must have reliable metrics and measurements in place to understand your existing discovery spend. is not only includes service provider charges, but also law firm charges.

For example, if you reduce one line item in the process by 20 percent, but spend 50 percent more on another item, you have increased rather than decreased costs. Spending some reflective time on fee and provider billings can help establish a baseline for what has been paid in the past for the entire discovery effort.

Next, the legal team needs to design a review program that removes multiple reviews of the same data. Both human manpower and technology need to be considered together as the process moves forward.

As part of this process, you will need to determine what your expected responsiveness rate will be. If you know you are in a needle in a haystack case (perhaps a government subpoena where search terms have not been agreed upon), thousands of dollars may be saved by using lower-cost labor to take the first triage cut of the documents.

If, however, your data analytics process is finely honed, such that 80+ percent responsiveness rates are achieved, a non-issue driven first-pass review might actually cost more than if counsel has to re-

view those same documents for privilege or fact development purposes.

Cost savings are achieved and duplicated efforts are eliminated in a variety of ways: Using technology to identify the highest relevant documents and directing those to counsel for review rather than a contract source; funneling the next tier to a managed review process; and possibly eliminating the non-responsive collection from any review.

### False Assumptions?

One historic problem with document review is that it was often believed that a linear document-by-document review by qualified attorneys always yielded correct results. The real truth is that less than 20 percent of most document sets are relevant, the cost of identifying the relevant set is very high and error rates themselves are high, leading to difficult defending the process.

While intelligent machine review may not ever completely replace human review, in most cases it can intelligently inform human decision-making in the document review process and assist in quality control



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