

Master Mining

THREE VIEWS ON EDD PROJECT MANAGEMENT

Lessons Learned

By Jeane Thomas and Ben Hawksworth,
Crowell & Moring

It's a surprising phenomenon.

In some instances, litigation discovery efforts are so complex and potentially expensive that the cost of the discovery process may exceed that of the substantive legal work performed on the matter. Indeed, in some cases discovery costs may exceed the potential damages at issue. That is an imbalance that stems from the massive amounts of electronic information generated by corporations.

Against this backdrop, firms increasingly find that clients are focused on their e-discovery project-management capabilities, so they must demonstrate they have the ability to manage them. Here are some of the lessons we've learned from managing these projects.

Staffing and internal resources. Project management and e-discovery are not subjects routinely taught in law school. Nor are they tasks that can be outsourced completely to practice support personnel or vendors. Many of the decisions that need to be made don't allow it. For example, deciding which data should be preserved, or whether to produce in native or *.tiff format may have important consequences for the outcome of a case.

But that doesn't mean lawyers should go it alone. For our largest projects — some of which exceeded 100 million pages of electronic documents — we have relied heavily on our administrators to provision space for the review, our IT and facilities personnel to secure computers, equipment and set up the review space (including bandwidth requirements), and our recruiting department to handle temporary staffing needs. Project leaders should identify the requirements, get relevant personnel dedicated to the team, and involve everyone in the planning process as early as possible.

Selection and coordination of vendors. There are three main components to an e-discovery process: data collection, processing, and hosting. While many EDD vendors say that they provide all three services, most are strong in one or two particular areas. Realize that e-discovery vendors make their money on processing services. So, generally, if you want them to host the data, they may require that you hire them to do the processing as well. Being able to independently mix and match best-in-class processes is increasingly difficult.

When selecting vendors there are myriad criteria that must be considered, including: the size and scope of the project, the length of time it will be hosted by the vendor, the speed of the review and number of simultaneous users, the type and detail of coding that will occur, the format in

which the data will be produced, and, of course, cost.

Although vendors will promote the features of their review software, front and back-end capabilities such as capacity and connectivity are often more important. For example, on one matter we managed involving approximately 40 million pages of documents, a vendor's system repeatedly froze due to the fact that we had hundreds of simultaneous reviewers. We were only able to meet our deadline because we chose to process approximately six million pages in-house.

To get the selection process started,

of the review is not considered. The best practice is to prepare an analysis that includes both internal (law firm) and vendor costs over the life of the project.

What you need from your client. The client's in-house legal team and senior management will need to be involved to ensure compliance with document preservation orders and to appoint a point-person to explain the process. Frequently, the process of preserving, collecting and producing electronic information becomes a subject of discovery itself. In litigation, your opponent often will seek to depose a witness on the process by which you are

to ensure the preservation of metadata, and approved by everyone before the first document is collected. This will help avoid later disputes about how the collection should occur, and will help witnesses explain the process to adversaries.

Troubleshooting. Despite best efforts to plan for every contingency, there will be glitches, and likely major problems, that inevitably will occur over the course of the project. It is important for project leaders to keep close tabs on all aspects of the project. We schedule routine conference calls — daily on our larger projects — with vendor and client personnel to check on project status and make adjustments as needed.

It's also important to know, in advance, who to call should you need to get a vendor's senior management involved. At times, we have had to call the president of a company to get his commitment to use all necessary efforts to resolve a problem — e.g., buying additional equipment and dedicating more resources.

Jeane Thomas is a co-chair of the e-discovery practice, and Ben Hawksworth is director of practice technologies, at Crowell & Moring in Washington, D.C. E-mail: jthomas@crowell.com, and bhawksworth@crowell.com.

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we issue requests for proposal to a minimum of three vendors. On receipt of the vendors' proposals, we analyze the services offered and the cost of each. If a problem does arise, the vendors will tend to point fingers at each other. As their client, law firms must often escalate such disputes to the vendors' senior management and insist that they be appropriately resolved.

Vendors are frequently chosen on the basis of cost, but this may actually lead to increased costs overall. For example, the hourly charges for reviewer time are generally the most expensive part of a project. Artificial intelligence review tools may substantially reduce costs by speeding up the pace of review, a benefit that may be missed if the overall cost

complying with discovery requirements. In a government investigation, agency staff may want someone within the client-company to explain the internal systems and archival practices, and the means by which data has been preserved, collected, and reviewed.

Coordinating the process. After the law firm, client, and vendor teams have been designated, we have found (admittedly, through trial and error), that it is critical to hold a “superconference” among everyone involved. The goal is to bring together the entire e-discovery team to build a comprehensive game plan and clarify everyone's role.

The plan that is developed at the superconference should be memorialized in detail, including all technical steps