2017

E-DISCOVERY UNFILTERED

A SURVEY OF CURRENT TRENDS AND CANDID PERSPECTIVES

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KEY TRENDS FOR 2017

CORPORATE COUNSEL

"Disposition has the potential to impact downstream information and reducing the amount necessary for review. Information governance is the silent killer in the background."

"More of a focus around analytics and not just for document review but also for cybersecurity concerns."

"I am curious to see how companies reconcile employing e-discovery best practices when there is an unsavvy opponent on the other side, particularly when that adversary is a government entity. That is quite interesting. I see a greater need and am surprised that there hasn't been more reliance on e-neutrals or an e-discovery referee in cases when you are working with unsavvy or untrusting adversaries because you don't want to give the other side a peak behind your walls. You need to have some level of trust."

"A lot of people do review and processing very well. We have figured it out and have a good workflow. In the future, you will see different ways to use the technology in a more advanced way and earlier on in the case further left in the EDRM, i.e., for information governance and before it ever goes out the door for processing and review. We made strides in this direction in 2016, but there is so much more to be done. It will expand to compliance and regulatory issues, as well as marketing and sales."

"How long can the traditional law firm model be sustained? How are we going to collect, preserve, and produce materials from web-based applications (e.g., knowledge management tools)? It is not even a document that is uploaded, it is entirely new technology. What about relevant information found on web-based applications, in cloud-based storage and Office 365?"

CORPORATE COUNSEL (CONTINUED)

"Everyone is talking about AI, but I'm not sure they will be able to use it appropriately in 2017. Even though people are talking about it, I don't think we will be able to use it in legal services. Consolidation. We will see more mergers. More investment in alternative legal services providers, which will take work away from lawyers and law firms."

"Cloud-based platforms. The expansion of Saas. The reemergence of ECA primarily as a result of the revised Federal Rules of Civil Procedure in an effort to make more reasoned arguments about proportionality. Greater application of AI. The cost of technology is less than half of the human reviewer. It is $0.40-$0.50 per document. The ability to review faster and cheaper allows us to get key documents to outside counsel faster so that the lawyers can develop their case strategy."

"Rethinking information management as more holistic to consider long before a claim or lawsuit. The challenge is educating management enough to encourage them to allocate the budget enough to do information governance in a meaningful way. Data volumes will continue to increase."

"I see wanting to use more technology that is reasonably priced and to have a desire for different systems to be able to integrate and talk to each other. We use Serengeti for legal billing, a different product for e-discovery, another product for legal hold, and another product for accounting. To have these different systems to communicate with each other would be nice. More companies will be able to have a litigation tool to be a traffic cop. They want tools to have connections."

IN-HOUSE LEGAL PERSONNEL

"Not enough vendors realize that the future of data is not to collect it, but to process it in place. The whole model of the industry needs to change because it is based on hosting. What your model is for profits has to change. There are vendors who will figure that out and vendors who won't. In five years, no one will want to take their data and give it to someone else. The key is vendors who learn to develop APIs that allow them to interact with a company's cloud. The whole beauty of the cloud is that you don't actually have to move the data. That means we need to rethink how we are charging for things. All of the bottom lines are based on hosting charges. That won't work in a cloud-based model. Some will figure that out and some won't."

"There will be an increase in TAR usage. Everyone thinks TAR is the future, but what I've noticed is that we have a lot more law firms who are starting to become amenable to using analytics to help them review, rather than look at every single document. Native

IN-HOUSE LEGAL PERSONNEL (CONTINUED)

productions are also on the rise. People are becoming more comfortable with native production, though not as much as they need to be. They are starting to realize that not everything needs to be TIFF'd."

"A lot of roles might be changing in e-discovery, especially with several judges retiring. The political climate is changing, which could influence litigation. A lot of the technologies that are out there are providing more power more simplistically driving more companies to engage with software vendors and service providers directly, without needing the law firm as the intermediary. Regardless of the changes, fundamentally litigation costs money. It is in everyone's interest to find the best solution because of a finite legal department budget."

"I am hoping that litigation support groups will have a better understanding of regular analytics and work them into their workflows better. I'm hoping that we start to see cases where more advanced workflows are contemplated and approved because that is why people are not using some of this stuff, because they are afraid to use it. There will be a buzz about all of the international e-discovery. There will be cases that will help everyone figure out the privacy guidelines. In the last two months, I have been asked to be on two panels and one webinar focused on international issues. 2015/2016, there was some traction on information governance, but in 2017, most organizations have someone with their finger on the pulse of the schedule of records retention and implementing automation. It is great to have a schedule, but if you cannot automate and get the user to do what it says, that schedule is worthless."

"The focus on learning more about the data sooner. You will see a transition from collecting data to reviewing it to having some sort of review capability in the wild. You will be able to review and tag without taking the document out and collecting it. If we can take the review platform and analyze documents in our own environment then give them to a paralegal or outside counsel to set up a security fence, we can take a powerful review tool and point it at your data where it is then evaluated. You are not collecting until you go out to produce it. Maybe the stampede to the cloud will help them but there also has to be security around that. Also, there will be more knowledge about what the data is. Information governance is not yet dead. It was too soon for the big push, but it is coming back. There are so many reasons to learn about your data that it cannot go away."

"The continued ethical responsibility of lawyers to be competent in their use of technology. There is a growing trend of competency at the lower level. Somehow, it has been ok for lawyers to remain unfamiliar with technology tools. You will see a lot more acceptance

IN-HOUSE LEGAL PERSONNEL (CONTINUED)

of AI that augments, rather than replaces, lawyers. Cybersecurity at law firms and the responsibility to secure client data. You will see more cyber issues."

"More companies are becoming comfortable with managed review and also with using technology in lieu of bodies. Instead of spending $40-50/hour on a lot of individuals, more companies may consider spending $200-300/hour for an elite group of individuals using technology."

"Everyone has heard TAR enough that it will just be mainstream. E-mail threading will be available everywhere. Analytics will become more commonplace. Implementation of FRCP and BYOD."

"There will be more private equity investments and, as a result, more consolidation. I hope there will be more innovation, which is more important than market share."

LAW FIRM PARTNERS

"Cost-reduction and proportionality, but the word proportionality is too broad. Narrowly, I feel more comfortable asking the client for specific items and not everything. It is now less risky to not collect broadly. Otherwise, the data size gets so big too fast and you are keyword searching relevant information on top of junk. The trend is cost-reduction due to focused collection, rather than broad searches. That is at odds with predictive coding, which requires a broad collection to cull through and there is a trend in using analytics, but that will probably be most important for companies with disorganized information. I think that for your average lawsuit, lawyers need to be much more focused on what they collect. Technologists should recognize that under this process, they will have less data to process, but it will be much richer at the outset."

"There haven't been a lot of new trends lately. It has become easier to negotiate limits to e-discovery because of the new rules. I thought that in the last year or two we would do more with threading, but it is still so complicated that it is not helping. People still aren't using analytics."

"I hear a lot of talk about predictive coding, but think that landscape is unsettled. It is not as widely used as people are reporting. It will be interesting to see if new technologies come out to disrupt the field, but right now the leaders are plugging along."

"I think there is some uncertainty due to the change of administration as to what the federal government's priorities will be. The trend is wait and see what the emerging trends will be from the federal government. Also, fewer cases are going to trial. There is a greater push to resolve cases in advance. Consequently, the discovery takes on a heightened importance because you know that discovery fights will be the only battles you will have."

LAW FIRM PARTNERS (CONTINUED)

"Cost is the biggest issue. Minimize what gets processed. The lawyers need to conduct better custodian interviews. I'm finding at least there is a need for people to get more clever about what they collect and process. Now, people are meeting with the client at the beginning to determine where they keep their material and can seize documents for training predictive coding technology. 5-6 years ago, you had an army of lawyers searching for documents. Now, if you do it right, you work with your clients to identify your documents with the witness to see if they are relevant. Now when they get entered into your review tool, you can save them and they become your training documents so you don't need expensive first-tier review."

"In legal, clients are becoming more price sensitive. That used to be true of many companies, but the big companies were willing to pay big law firm fees for discovery services. You now have procurement taking over the fee discussions. It has become tougher for law firms to thrive because of billing issues. It is harder to make partner and even after you make partner it is not tenure anymore. The legal market has gotten tougher for providers, which trickles down to the discovery market. There are so many attorneys unemployed that you can find quality reviewers much more cheaply. Courts are also paying more attention to get discovery costs under control. The federal rules will begin to make litigation more cost effective and bring the costs down, eliminating the need to settle because the price of litigation is too high. I am not seeing the e-discovery pie increase like the way the consultants are projecting. I'm not as optimistic about growth in the industry."

"Analytics. Speed and Efficiency. Infrastructure to increase processing and production speed is emerging as a key issue. Data security."

"Analytics, analytics, analytics. It is all about reducing the data set as much as we can before we show it to people."