E-Discovery Best Practices
and the Problem of Standardization

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In the last decade, the legal industry has seen explosive growth of corporate electronic records, leading to a boom in the electronic discovery (e-discovery) industry and the emergence of advanced legal technologies to facilitate the collection, processing, and hosting of that data. As the industry has grown, trade groups, law firms, and technology companies have begun concentrating on establishing standardized models and methods in an effort to govern industry practices in e-discovery.

Recently, a trend has developed among litigation practice groups of creating specialized departments – often called "Practice Support" or "Litigation Support" – to handle the technical challenges of managing the large amounts of complex electronic data that have become a regular burden for case teams during discovery. As a result, department members are finding themselves cast as "Litigation Support Analysts, "Litigation Support Specialists," "Project Managers," and other roles which tend to encompass a very narrow range of responsibilities. The appearance and adoption of these positions is evidence of the growing trend towards the establishment of highly structured workflows for handling cases firm-wide.

While this kind of specialized focus and compartmentalization of expertise can yield increases of efficiency for firms and practice groups, it can also impede innovation and lead to a reliance on practices that are grossly inefficient and poorly suited to the unique challenges that arise during a case lifecycle. In worst-case scenarios, valuable fact records may be lost due to a dependence on procedures that were incompatible with case challenges. When individuals in an organization become too specialized and overly reliant on standard procedures, the complex problem-solving and well-reasoned analysis that drive true innovation are stifled.

Litigation is, by nature, a creative process. The most effective litigators are able to think critically and develop nuanced, inventive strategies to advocate on their client's behalf. This requires much more than rote memorization of the Litigation 101 handbook, and it certainly will not be accomplished by following the same scripted procedures for every case. Instead, litigators must develop a strong understanding of the unique problems of each case, and fortify that understanding with the appropriate skills and experience. A litigation support department is at its best when it promotes the same flexible approach to e-discovery.

Developing internal talent that is well-rounded while still maintaining a highly structured system of operation is a challenging endeavor, but law firms can cultivate these high performers by committing to educational and training events that take specialists out of their prescribed comfort zones. At the litigation support level, technicians should be challenged to develop a working knowledge of the legal process, or brought into team sessions where they can be exposed to case strategy. Likewise, attorneys and paralegals should be taught the basic technical skills necessary to operate a database, which will help them make decisions and establish case workflows that are practical and efficient.

Moreover, practice groups should choose e-discovery tools that allow for flexibility and creativity on behalf of their end-users and administrators. The best tools are open systems that can effectively leverage the abilities of a clever user. Closed systems that act as a one-size-fits-all solution can be useful, but only for matters that are narrowly tailored to suit the application. When evaluating new technologies, firms should focus on the flexibility of the application in conjunction with the specialized skills of the individuals who will be using and administrating it.

For litigators – perhaps more than in any other practice area – adaptability is key. Unfortunately, today's litigation support departments spend too much time worshipping "the method" and using one-size-fits-all technology solutions, when they should be developing their internal talent. Relying solely on technology and standardized procedure results in an apathetic industry that stifles creativity, accepts inefficiency, and pigeonholes the end-user. To counteract this effect, litigation practice groups must be willing to commit to cross-disciplinary training events and seek to push team members beyond their comfort zones.

About the Author: Jim Iseman is Director of Litigation Technology Services and oversees TransPerfect Legal Solutions' discovery and litigation support teams. Prior to joining TransPerfect, Jim spent five years overseeing technical discovery on complex groundwater litigation matters in re Methyl Tertiary Butyl Ether (MTBE) Products Liability Litigation. He is a graduate of Duke University.