

BUILDING A LEAN IN-HOUSE E-DISCOVERY STRATEGY

Whether you're a seasoned Big Law partner, a mid-career corporate counsel, or just got your ticket, e-discovery can be overwhelming. But it's here to stay — and growing exponentially with the rise of Big Data.

"Building a Lean In-House E-Discovery Strategy," a webcast presented by Legaltech news and sponsored by Epiq, is a great way to ratchet up your e-discovery comfort level.

Erin Harrison, editor-in-chief of *LegalTech News*, moderated the webinar, which featured lawyers Daniel Gold, director of sales engineering at Epiq and Mike Haven, senior corporate counsel of legal operations and litigation at NetApp.

"Let's face it: Between collection, storage, analysis, and numerous other tasks associated with the process, e-discovery is notorious for being the most time intensive — and therefore, the most costly — part of litigation," said Harrison. Controlling risks and reducing costs remain primary business goals for organizations seeking better, more effective e-discovery options, she said, citing Gartner's 2015 Magic Quadrant Report.

"There is no silver bullet, nor is there a one-size-fits-all approach to solving the complexities of the process," Harrison said. "As more legal departments and law firms strive to run their operations as a business, the selection of e-discovery software and services has become an increasingly important decision," she said. Among the options, "managed services is a burgeoning area."

STATISTICS SPEAK AND THE STATE OF E-DISCOVERY

Epiq's Gold offered statistics to illuminate e-discovery challenges. A former trial lawyer, he's spent 11 years in e-discovery software and services, including seven years at LexisNexis. His data highlighted how escalating data is making e-discovery more challenging and expensive.

- Every day, 23 billion text messages and 205 billion emails are sent globally. When holding custodians' data and collecting it, processing it, then reviewing and processing again, "we are collecting the text messages, the emails, the Word docs, etc. — all that data that we're creating every day," said Gold. The newer the technology and the more data produced, the more expensive it ultimately becomes to store and review, he added.
- The e-discovery software and services market is currently \$6.2 billion. Software is expected to almost double, from \$1.8 billion in 2014 to \$3.1 billion in 2018. Gold referred to an in-house counsel survey that showed 94 percent of e-discovery involves

processing and hosting the data. Small companies are projected to spend \$12,000 per year just to preserve their existing data; a large company might spend upwards of \$38 million, he said.

- 25 percent of lawyers expect litigation against their clients will increase within 12 months.
- 75% percent of law firms believe that e-discovery capabilities should be a centerpiece of client retention and business development.

Gold also said that organizations are over-preserving electronically stored information for fear of sanctions, and are spending millions of dollars preserving data that may never be filed. What's more, firms and companies are spending time sourcing vendors for project after project. If they move data every time, that quickly becomes burdensome and expensive. Many are considering bringing e-discovery in-house, but that option can also be very costly, he said.

"What we are hearing from corporate legal departments and law firms is that they don't want to have to worry about the patches in the software, the upgrades [software and infrastructure], sandboxing the software whenever new releases come out ... or security, backup, and recovery of their data on their own servers," said Gold.

"We're also hearing that litigation professionals want to be elevated," he said. "They want to learn how to create better processes and workflows so they can become more efficient in partnering with their internal clients [lawyers]."

And they want to "reduce costs, forecast the budget and even potentially recover e-discovery costs so they are not always in the red."

EDRM ADVICE

Haven focused on [The Electronic Discovery Reference Model](#), which outlines the linear tasks of the e-discovery process. As an example of how a company might handle EDRM, Haven said that NetApp staff focus on the EDRM left-side tasks, turning to overseas services for right-side activity. By keeping the left side inside, "we don't have to put our attorneys behind the firewall and we don't have to pay for end-to-end services."

The right side includes processing, review and analysis, production, and presentation. An external team might include an e-discovery partner, document review partner, and outside lawyers.

Information governance

IG is the "maintenance phase" of e-discovery, Haven said.

"In the corporate world, if you keep your house in order with sound IG, the preservation and collection processes ... are much more efficient — and greater efficiency translates to less expensive and more defensible processes," said Haven, who previously was a partner at K&L Gates.

But he warned that IG need not — and probably cannot — be perfect. "You will kill yourself and spend way too much money striving for perfection," said Haven. "You have to look for the right balance."

On the other side, identification, preservation, and collection make up the "action phase," when an organization perceives actual or anticipated litigation, Haven noted. Don't jump in too early here, he advised.

"The case may never materialize — or may get adjudicated or resolved before discovery begins. You don't want to go down the rat hole of spending a bunch of money unnecessarily." But early case assessment can be prudent when there is a potential for the case to get very expensive, he said.

Preservation

Once custodians and documents are identified, "the goal is to ensure that identified data remains safe and free from unauthorized access to reduce the chance of data destruction or exfoliation," said Haven, who recommends "a state-of-the-art automated legal hold tool."

Document review

This "is a very sophisticated process, with first and second task reviewers located overseas," Haven explained. "You'll hear that the overseas rate is about a dollar per document, but we do much better than that, and quality has been terrific."

Analysis and production

These are the most sensitive, and potentially the most expensive, aspects of the process, Haven warned. The goal is to make the sets narrow using a defensible method, "because you don't want many documents reviewed at \$300-plus an hour," he said. "Don't make the mistake of providing too much data to your outside lawyers. They'll have a field day with it, and you just want to give them what you need to give them."

Haven also suggests the use of carefully monitored budget dashboards. "Outside counsel do not have my proxy" said Haven. "E-discovery is not the Wild Wild West any more. Technology is the disrupter."