

# Electronic Discovery Spend Management



Control Discovery

Tactics for Managing Electronic  
Discovery Costs in Challenging Times

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# A Quick Survey



- How many of you have worked in:
- Exclusively for Law Firms?
- Exclusively for Corporations or Government agencies?
- All of the above?



# Why Spend Management?

- The Obvious
  - Down economy, tighter budgets.
  - Electronic data volumes continues to grow.
    - No slowing, 40% year over year
  - Good lawyers and good clients are hard to find
    - Average relationship 11 years (ACC)
    - Average business cycle 7-8 years

# Why Spend Management?



- The Not-So-Obvious
  - Data much more accessible in many organizations today
  - Amount of data available often bears no relationship to the value of the matter.
  - Two sources of greatest dissatisfaction in client/law firm relationship?
    - Over-lawyering
    - Billing disputes



# Why Me?

- Visibility on a key issue
  - Effective cost management
  - Client satisfaction with value
- Finding ways to do *less with less* improves your value
  - Doing your homework
  - Providing advice
  - Using good judgment
- Waste and excess are never good business
  - Last Summer, talk of the \$1,000 billable hour and the “Walgreen rebellion”.
  - Today? A recent ABA survey found fully one-third of lawyers were worried about layoffs.



## Me Worry?

- Last Twelve Months:
  - Small Matters – Two or three a quarter
  - Medium Matters – One or two a year
  - Large Matters – One every few years
- Isn't spend management only for large matters?

# Where Does Spend Management Fit?



| Case Size | Number of Custodians | Number of Emails | Review Model                    | Cost Per Hour | Cost per Message | Review Cost |
|-----------|----------------------|------------------|---------------------------------|---------------|------------------|-------------|
| Small     | 1                    | 30,000           | Attorney Only                   | \$350         | \$1.75           | \$52,500    |
| Medium    | 15                   | 200,000          | Associates & contract reviewers | \$250         | \$1.25           | \$250,000   |
| Large     | 60                   | 1,000,000        | Associates & contract reviewers | \$150         | \$0.75           | \$750,000   |



## Is There A Moral To This Story?

- Corporate or Government Client Perspective
  - “Watch the pennies and the dollars will take care of themselves?”
- Law Firm Perspective
  - “Fast Nickels instead of Slow Dimes”
- Big \$\$ opportunities in smaller matters?

# Big \$\$ Opportunities in Smaller Cases?



- Big cases get more budget attention than smaller cases
  - Cost control strategies (contract reviewers)
  - Specialized tech (online review solutions)
- Smaller matters often get less budgetary visibility
  - Contract reviewers are used if they are available.
  - We use the tech we have on hand.

# What Spend Management Tactics Work?



- Techniques that work in larger cases
  - How can we find and focus on the right people
    - Earlier than later
    - Drawing the line
  - How can we use tech to speed things up?
    - Finding relevant date ranges
    - Identifying “good” search terms
    - Removing irrelevant stuff (broadly)

# Searching for Savings



- AKA “Early Case Assessment”
- Technology helps identify People Tactics
  - The emerging reality is that tech in many companies enables really quick/easy searches.
  - It’s easier today to get answers to good questions than it ever has been.
  - We’re not yet asking enough questions.
  - Remember the 5W’s: Who, What, Where, When, Why?
- People help identify Technology Tactics
  - Organizational memory still matters.
  - Working the ‘good old \_\_\_\_\_’ network.



# Tactics via People

- Remember this is a “Learning Curve” not a “Big Bang”
  - S/he who learns fastest wins
- Find the epicenter quickly
  - Trust initial guidance
  - Verify role
  - That doesn’t mean everyone who got an email...
- Distrust the relevance of the periphery
  - Distrust until proven relevant
  - Verify role
  - That means practically everyone who got an email...
- There are limitations
  - Memories are imperfect
  - Principals may have moved on



## Tactics via Tech

- Do a “Throwaway” Search
  - Reasonable search terms, date ranges
  - OK to be conservative (a bit wider on dates, for example)
- Do a Quick Manual Review
  - Half-hour per custodian Maximum.
  - Quick observations and estimates
    - Number of messages overall?
    - Messages from relevant issues ‘foldered’?
    - Any obvious date ranges for relevant topics (Months/years)
    - Who’s *listening-in* vs. Who’s *conversing*?



## Some Best Practices

- Remember this is a “Learning Curve”.
  - Throw-away searches.
  - Quick data reviews.
  - Set review priorities.
  - Review data in priority order.
  - Schedule one or two conference calls including outside counsel and company/agency lawyers.
- Draw a budgetary line in the sand.
  - Attorneys will agree to limit less relevant custodians.
  - Good keywords and date ranges may emerge.
  - Leave open the possibility for mid-course corrections.

# Thanks!



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