

Getting Quality in Electronic Discovery



Control Discovery

A Decision Process

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Overview

- Do you need Quality in Electronic Discovery?
 - In electronic discovery, you get what you pay for.
 - However, if you don't really understand what you are paying for, opt for the vendors with a *provable* record of quality.
- Background, Current Situation, Your Situation
- Three Approaches to Electronic Discovery Quality
- Choosing An Approach, Advantages, & Disadvantages
- Conclusions and Next Steps



Background

- Parties are generally poorly prepared to be effective partners in executing electronic discovery.
 - Clients often don't understand or communicate key issues about their data that can effect electronic discovery quality.
 - Law firms generally do not have relevant expertise.
- There is a tendency to think about electronic discovery execution as a tactical and not a strategic issue.
 - Simple risk-reducing measures are not implemented.
 - Situations like the recent Morgan Stanley case arise.
- Sound advice is often hard to find.
 - Strategies for assuring high-quality electronic discovery.
 - Tactics for controlling electronic discovery costs.



Current Situation

- Issues are not identified and isolated at the source.
 - Client data is first collected and restored.
 - Data is then sent to the discovery processing vendor.
 - Errors known to compromise quality slip through undetected.
- Data errors often identified late - in the review.
 - Lit Support must work overtime with the vendor to try to remediate case data.
 - Existence of review designations often complicates data remediation efforts.
 - Some “cumulative” error patterns only become apparent after one or more productions have been made.



Need Quality in Electronic Discovery?

Questions for Litigation Support

- Do reviewers discover errors in processed data that you believe your electronic discovery vendor should have caught?
- Has your electronic discovery vendor been late delivering data for review?
- Does it seem to take too long to fix errors once they occur?
- Is your electronic discovery vendor slow to make changes to accommodate the specific needs of your case?
- Have there been errors related to these customizations?



Need Quality in Electronic Discovery?

Questions for Litigators

- Has the integrity of the litigation database been called into questions, with instances of questionable data or images?
- Is the litigation database larger than a few thousand pages, or is it updated more than once a week?
- Have there been review delays due to errors or inconsistencies in the litigation database?
- If the answer is “yes” to some of these questions, a focus on Quality in Electronic Discovery might be smart.



Getting Quality in Electronic Discovery

1. Define the Decision Team
2. Determine Legal Objectives and Constraints
3. Choose a Strategy
4. Evaluate Vendor Quality Capabilities
5. Gather the Decision Team and Decide



Define the Team

- Litigation Partners
- Antitrust Partners
- Litigation Support
- *Client General Counsel*
- *Client IT Management*



Determine Objectives and Constraints

- What benefits do you hope to gain?
- Case deadlines?
- Litigation budget constraints?
- Staff headcount constraints?



Choose a Strategy

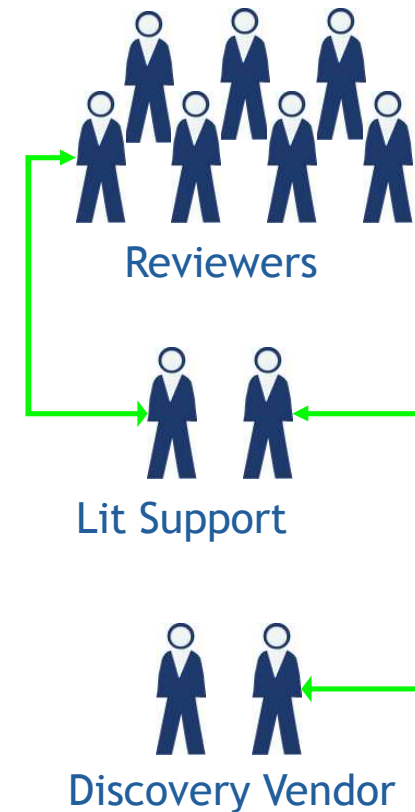
Three main approaches to Electronic Discovery Quality:

- Identify issues during Document Review
- Identify issues during Data Collection
- Rely on an Electronic Discovery Vendor



Identify Issues During Document Review

- Reviewers perform a standard review of case data.
- When error patterns emerge, discovery vendor is contacted.
- Discovery vendor handles investigation and remediation.
- Lit Support is kept apprised of progress.





Identify Issues During Document Review

Costs

- Review delays.
 - Identifying the problem is often the easy part.
 - Reprocessing documents, fixing databases is hard.
- Loss of confidence in litigation database.
 - Inconsistencies kill confidence.
 - Obvious errors lead to “what else?”
- One more thing for Lit Support to manage.
 - Time consuming (rarely “just a phone call”).
 - Distracts from other cases and productions.



Identify Issues During Document Review

Advantages

- Lit Support staff doesn't have to fit it themselves.
- There is a single point of responsibility for electronic discovery quality from the original vendor.



Identify Issues During Document Review

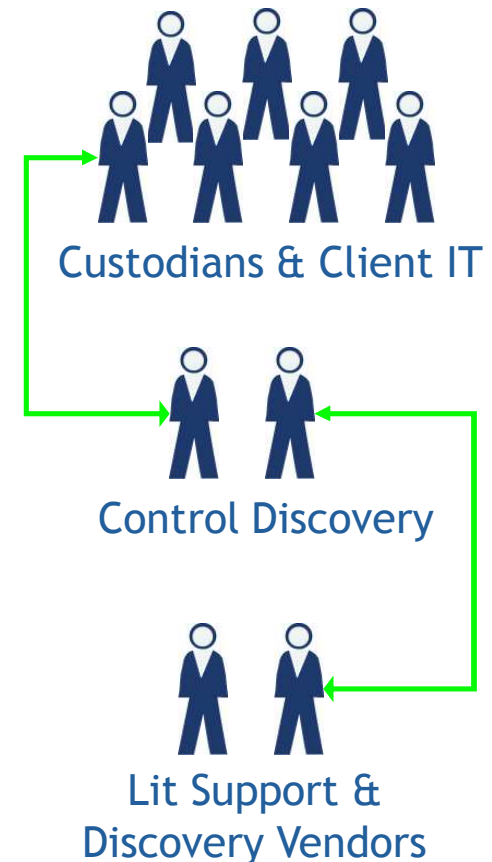
Disadvantages

- Costs of correcting errors discovered during the review will always be 10X higher than for those identified (early) during data collections phase.
 - Certain types of errors are difficult to identify in the database once processing has been completed.
 - Remediation efforts must preserve existing review designations.



Identify Issues During Document Collection

- Control Discovery performs analysis on client documents as they are being collected.
 - Client IT practices known to introduce errors in discovery processing.
 - Custodian work habits known to introduce errors into discovery processing.
- Control Discovery works with collections team to identify issues and segregate any problem data for separate processing.





Identify Issues During Data Collection

Costs

- Cost of Electronic Discovery Quality Services.
- Added upfront costs are offset by lower costs due to fewer issues identified during the review.



Identify Issues During Data Collection

Advantages

- Cost-effective. Client data that can lead to discovery processing errors is identified and segregated before discovery processing begins.
- Discovery vendor is notified early of issues in client data, in time to develop and test a response plan.
- Consistency is maintained as “clean” data deliveries are processed and added to the litigation database.
- Extra quality assurance is focused on any previously identified “problem” data to ensure expected accuracy.



Identify Issues During Data Collection

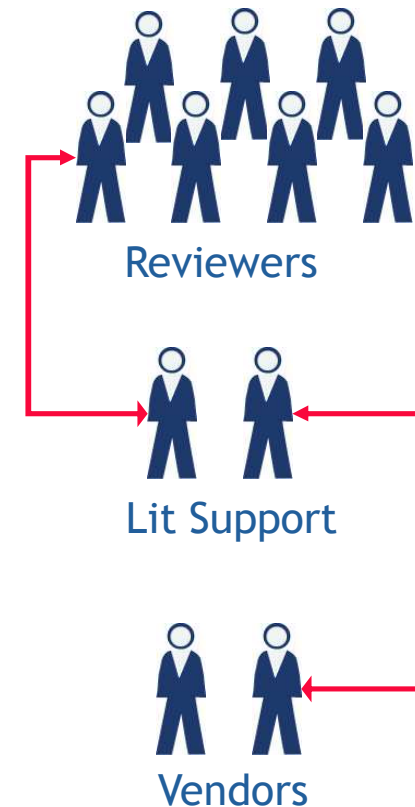
Disadvantages

- Process must be performed before or during custodial data collection.



Rely on Electronic Discovery Vendor

- Rely on Electronic Discovery processing vendor to provide end-to-end quality assurance.
- When error patterns emerge in the data in review, Lit Support is contacted.
- Lit Support manages the issue with the discovery processing vendor, from investigation through final data remediation.





Rely on Electronic Discovery Vendor

Costs

- Labor costs associated with Lit Support staff managing problem resolution directly with the discovery processing vendor.
 - Time consuming (rarely “just a phone call”).
 - Distracts from other cases and productions.
- Additional vendor hourly project management charges over and above electronic discovery processing fees.
 - \$2,600 per GB for cases ranging from 25GB - 200GB.
 - \$1,200 per GB for cases with 1Terabyte or more.



Rely on Electronic Discovery Vendor

Advantages

- Managerial simplicity: Discovery processing delegated entirely to discovery vendor.
- Works with existing litigation workflows.
- Processing costs appear to be predictable.



Rely on Electronic Discovery Vendor

Disadvantages

- Responsibility for quality assurance is fragmented among the client, many vendors, and the review team.
- Only cursory quality assurance provided by discovery vendors.
 - Many discovery processing vendors believe they are only responsible for providing a process, not a certain level of quality in the delivered data.
 - Discovery processing vendor contracts often contain liability waivers or significant damage caps against errors and omissions.
- Little effort made to profile client data issues prior to the start of processing.
 - Projects can get off to a bad start quickly if client IT practices or custodian software usage practices conflict with vendor capabilities.
 - Undetected processing errors delivered through to reviewers.



Evaluate Vendor Quality Capabilities

- Does your Electronic Discovery Vendor Perform “QA”?
 - Capabilities -
 - How many staff devoted to quality assurance?
 - Is there a written “test plan” for each QA check?
 - Is there a system to track each issue and resolution?
 - Does the vendor provide QA reports for each delivery?
 - Effectiveness -
 - Are there key issues that are not being checked?
 - How much of the process is covered by QA testing?
 - Are the right tests being done for the issues of concern?



Summary & Recommendations

Approach	Pluses	Minuses	Costs	Summary
Review	<ul style="list-style-type: none">•Lit Support not distracted•Single point of responsibility•Dedicated, independent expertise	<ul style="list-style-type: none">•Costs of correcting errors are 10X higher when done during the review than when done using Data Collection approach.	<ul style="list-style-type: none">•Costs of Lit Support resolving issue with discovery vendor•Cost of idled review staff.	<ul style="list-style-type: none">•Rarely an acceptable strategy; highest cost and greatest risk to case.
Data Collection	<ul style="list-style-type: none">•Cost effective•Early discovery vendor notice of client data issues•Consistency in litigation database•Extra QA focus on problem data	<ul style="list-style-type: none">•Process must be performed before or during custodial data collections.	<ul style="list-style-type: none">•Electronic Discovery Quality Services•Higher upfront costs offset by fewer errors identified during review.	<ul style="list-style-type: none">•Most cost-effective approach; lowest cost and lowest risk to case.
Vendor	<ul style="list-style-type: none">•Works with existing litigation workflows•Processing costs appear predictable	<ul style="list-style-type: none">•Fragmented responsibility.•Only cursory QA offered by most discovery vendors•Little effort to avoid client data issues	<ul style="list-style-type: none">•Costs of Lit Support resolving issue with discovery vendor•Cost of idled review staff.	<ul style="list-style-type: none">•Current status quo, prone to inconsistency and unpredictability



Conclusions

- Getting Quality into Electronic Discovery Quality is an important decision.
 - Potential impact on perceived quality of the firms litigation services.
 - Potential impact on client's ability to execute electronic discovery with greater assurance of an accurate, timely result.
- Define the decision team and follow a process to make the best decision.



Contact Us

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“Control Discovery offers a wide range of electronic discovery services designed to help law firms and enterprise clients control the cost, quality, and accuracy of electronic discovery.”