

The Case For Outsourcing Document Review

The Editor interviews **Jean Weir**, Director in the Forensic & Dispute Practice of Deloitte Financial Advisory Services LLP. She specializes in the management of electronic and hard copy discovery projects involving document collection, review and production for law firms and law departments.

Editor: How has the economy affected how companies are viewing document review services?

Weir: I think that the economic downturn has forced companies to take a harder look at their total legal spend. In particular, companies appear to be closely evaluating discovery-related spending and seem to be focusing more quickly and strategically on finding ways to help reduce their discovery budgets. Companies appear to be recognizing that the time to identify cost control and reduction strategies is now. I have also seen that there is a growing interest and demand in exploring the use of document review services. Since one of the biggest spends in discovery is document review, one area that is of predominant interest to many companies is outsourcing, both domestically as well as foreign or "offshoring."

Editor: How have companies and law firms responded to the pressures of e-Discovery related costs?

Weir: I think parties involved understand that the sheer volume of data created and maintained by companies can make the collection, processing, review and production of discovery documents an overwhelming, expensive and high-exposure endeavor. It's no surprise that electronically stored information will likely only continue to grow. In order to address these concerns, companies and law firms are recognizing the value of working with document review service providers. Not only will companies require new ways to reduce the data that needs to be reviewed and produced, but the document review needs to be conducted in the most efficient and cost-effective manner.

Editor: How could the relationship between in-house counsel, law firms and vendors change?

Weir: Reducing discovery spend is going to require a commitment from in-house counsel, law firms and vendors and the paradigm in which discovery matters were addressed between in-house counsel and law firms may change. I think law firms may seek vendors more now than in the past in order to help out their clients with cost containment and data reduction. Law firms appear to be recognizing the potential value of document review service providers and appreciate that they can help support and serve their clients by providing an alternative and typically more cost-effective option to traditional document review. In addition, the litigation support industry has many technologies for document review and most document review service providers use technology whenever possible to streamline their work.

Editor: What role may outside counsel play when document review is performed by and outside vendor?

Weir: Since most document review service providers do not engage in the practice of law, the document review is conducted

under the direction and supervision of outside counsel. An experienced document review service provider can provide well-documented processes that are designed to make supervision seamless for such supervising counsel and provide a continuous stream of knowledge transfer between the document review service provider and such supervising counsel. Additionally, a document review service provider can collaborate with counsel on review guidelines, case training, issue identification and project budgeting.

Editor: How can companies and law firms monitor the quality of document reviews performed by outside vendors?

Weir: In my experience, an important step in setting up the document review parameters and guidelines is for outside counsel to define standard procedures and expectations for monitoring quality control. At a minimum, the document review service provider should be able to document their quality control process and provide in-house and outside counsel summary reports detailing project productivity, document reviewer quality statistics (including efficiency statistics and error rates) and project status. Some key questions to consider when monitoring quality include:

- How experienced are the document review service providers?
- How accurate are the document review service providers?
- How efficient are the document review service providers?
- Can they complete the task in a timely, dependable, and consistent manner?
- Are they able to transfer case knowledge back to in-house or outside supervising counsel?
- How are key documents identified and escalated?
- Does their management team have the experience to handle the nuances of document production?

Editor: Can you describe the system of metrics that Deloitte FAS may use and how you distinguish your methods from those of other document review service providers?

Weir: Deloitte FAS' Document Review Services group developed a powerful database called eRaptor, which stands for Review and Productivity Tracking or Reporting. In working with in-house or outside counsel and the client to help them manage budgets and costs effectively, we use eRaptor to simplify the tracking and reporting of document reviews. eRaptor allows us to manage our workflow processes in real time, so we can provide clients with broad reporting on multiple variables of project status, for example, particular custodian review status, production status, reviewer quality statistics, up-to-the-hour cost expenditures, all of which can be crucial to in-house or outside counsel in making case strategy and ongoing expenditure decisions. Since the eRaptor database is a flexible objective-oriented database and review platform neutral, we can quickly manipulate the database to meet the demands of even the most nuanced document review project.



Jean Weir

Editor: How can document review service providers help clients manage their budgets?

Weir: I think what we're seeing is an increasing importance on accountability, that is, pressure from the client to ensure that budgets are not overspent, and that resources are allocated appropriately. I think law firms may start strategizing their resources better and companies may seek a vendor who can provide them with budget transparency and forecasting. Document review service providers can assist with early case assessments and first pass reviews. In addition, to address accountability and transparency, document review service providers can help their clients understand situations in which resources could be allocated better, and identify potential areas that could be incurring high costs. Document review service providers can also help clients manage their budgets by furnishing regular status reports that may include information on overall case status including budgeting information.

Editor: What process may a document review service provider undertake at the outset of a project to establish a budget?

Weir: In my experience, if a document review service provider has a solid understanding of project scope and variables, it can provide a methodical project budget. Some of the variables to consider when establishing a document review budget may include:

- Project Size
- Deadline
- Type of Case (Internal investigation, litigation)
- Review Tool (i.e. Concordance, Relativity, Introspect, Stratify)
- Data type (i.e. Native, Tiff, PDF)
- Data Source (i.e. hard copy, ESI, audio-visual)
- Redaction Requirements (i.e. Privacy, Privilege, Non-responsive)
- Levels of confidentiality (i.e. Confidential; Highly Confidential)
- Level of Review (i.e. First Pass; Relevancy, Privilege)
- Coding requirements (i.e. issue coding, subject coding)

Quite often budgets are provided before data has actually been processed or additional sets of data are collected and processed after a budget has been determined. I have found that companies appreciate when a document review service provider has the ability to monitor project scope and can alert counsel and client when project scope exceeds original estimate ("scope creep") and adjusts their budgets accordingly.

Editor: How can vendors keep documents that are being reviewed confidential?

Weir: Most document review services are conducted on hosted databases. These databases are usually hosted by third-party vendors. These third-party vendors typically employ various security measures including multiple levels of passwords, validation of user names and accounts, restriction of data according to security groups and user rights. Database passwords are regularly reset and database accounts are terminated upon project completion or when a document review attorney is reassigned or leaves a project. In addition to database security, many providers may employ addi-

tional security measures including background checks, confidentiality agreements, restriction of Internet access, disabling of instant messaging programs, disabling printer functionality, securing the employee work stations including restricting access to data and USB drives; key-card access to work sites, etc.

Editor: As in your own case, are you seeing companies turning to India?

Weir: I am seeing more and more companies embracing the option of having some document review services conducted in India. More importantly, I have seen that the perception of such reviews in India is changing. I think India's role will continue to grow as companies become more comfortable with this option and experience the benefits of the high-quality work being done there. Companies and law firms appear to recognize that having a domestic foundation combined with offshoring capabilities can have many advantages including round-the-clock coverage, one source of project management, and a dedicated workforce.

Editor: What was the perception of using outside providers for document review services a few years ago and how has the perception of them changed over the most recent year or so?

Weir: I have seen a greater acceptance of using outside providers to provide document review services over the past several years. I think that this acceptance has increased as companies and law firms have experienced the benefits of using such outside providers. Some of these benefits may include experiencing a lower-cost alternative, creating greater efficiencies, having a dedicated and well-educated workforce, and maintaining round-the-clock coverage if the review is staffed both domestically and offshore. In terms of the most recent year, I think that the ethics opinion issued by the American Bar Association over this past summer, indicating that, if compliant with certain requirements, lawyers may outsource legal or non-legal support services, may strengthen the perception that document review service providers can be a viable and low-cost alternative to the more traditional methods of document review.

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