

The discovery phase of litigation, once the bastion of war rooms, hundreds of thousands of pieces of paper, Bates stamps and coded labels, now speaks a new language with words such as gigabytes, TIFF images, metadata and document clusters abounding.

War rooms full of paper have been replaced by millions of electronic files to be sorted, categorized, reviewed and integrated into every phase of the discovery and trial preparation process. But how do you choose a vendor and the right software to create a user-friendly system for speedy, accurate document review? This has become the subject of intense strategy sessions for many lawyers. E-discovery is so vital in the litigation process that decisions regarding its use are a top priority for lawyers, and often are resolved before the filing of a complaint.

The Need for Speed

Jeane A. Thomas, a partner with Crowell & Moring in Washington, D.C., knows first hand the importance of developing an excellent e-discovery and document review system. Specializing in all types of antitrust representations, she has focused extensively on the telecommunications, technology, chemicals, health care and pharmaceuticals industries. "Document productions were all paper 15 years ago when I started working in this area, but the volume, data and documents have ballooned with the addition of e-mail, hard drives and more," she said.

Recently, she played a principle role in Cingular Wireless' \$41 billion acquisition of AT&T Wireless. As the Department of Justice was reviewing the merger, it requested massive amounts of documents in a broad number of categories be produced. Currently, she is handling another massive document request from the DOJ in connection with SBC's acquisition of AT&T. The DOJ had expanded its definition of the term "document" to include all forms of electronic documents, bibliographic data underlying the documents, metadata and electronic storage data, including voice mail and messaging data, Thomas said. She and the other attorneys on her team knew they needed a comprehensive plan to tackle this discovery request.

The attorneys issued requests for proposal to eight electronic discovery vendors. After studying each of the vendors' capabilities, the firm decided Kroll Ontrack Inc. (www.krollontrack.com) had the best resources to handle the project, which included approximately 2.5GB of information and less than 45 days to produce the documents.

Working with Kroll, more than 30 million pages of documents were loaded into the e-discovery software for review at a rate of three to five million per day. The team quickly reviewed the documents, producing

and blank pages from spreadsheets and e-mail, allowed for keyword searches and restricted documents to a certain date range if needed, while Electronic Data Viewer allowed attorneys to look at documents quickly, then tag those they wanted to produce and those they wanted to hold back for privilege or nonresponsiveness, according to Wall. The legal team could run a report at any time that would give them a snapshot of how far along they were in the document production process.

Simply producing the proper documents was not enough. According to

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15 million documents to the DOJ within the allotted time frame.

"Our proprietary system, known as 'Control Center,' was perfect for the back end of this document production," said Chris Wall, a legal consultant with Kroll Ontrack. "We then used Electronic Data Viewer to put the documents in the front end for review."

The Kroll system allowed 600 users to simultaneously review and produce documents. Control Center helped remove duplicate documents

Thomas, the DOJ has become very specific about the format of production and how it would like documents delivered, specifying that certain files are to be in TIFF format, while others must be in native format. Fortunately, Kroll was involved directly in a number of conversations with the technology team at the DOJ and the attorneys on the case, which became invaluable to its ability to assist Thomas and her team.

"We learned a lot in this process, as did Kroll, about connectivity issues,

EDV, how fields should be structured in a certain way, coding and security," Thomas said. "Kroll implemented the system and made it user friendly. They were committed to the project and gave us a great level of attention and priority."

Thomas said she thinks the fact the team was able to respond so quickly to the DOJ in the Cingular matter helped result in a favorable outcome for her client in the merger.

Choosing a Vendor

Crowell & Moring uses e-discovery in a variety of litigation matters, employing many different vendors, according to Thomas. The number of requests for documents are increasing in antitrust litigation, and Thomas said she thinks it's important to stay current on ever-changing software trends and understand the variety of services available.

"We learned a lot through the Cingular Wireless and AT&T Wireless merger process — primarily that one size doesn't fit all," Thomas said. "One vendor and one tool works for feeding massive amounts of data through the pipeline, while another vendor and different software might work better when demands entail a small amount of documents needing detailed coding."

The length of the case can determine which vendor and system to choose as well. Thomas said she and her colleagues are not married to one system or one vendor and work hard to keep abreast of e-discovery trends. She said she recommends lawyers meet with Information Technology staff in their firm, who are experts in these matters, and make sure they are up to speed on what is available so they make a decision based on all the options, then meet with the vendors.

"Don't just focus on the bells and whistles of the actual reviewing tool, but instead look at how the data is processed and what is going on at the front end and back end of the document production," Thomas said. "The pace that the documents are loaded and processed determines the pace of the project."

When choosing a vendor, Thomas said she recommends saving a couple hundred public documents of all different file types on a CD-ROM, then ask-



ing the vendor to load these documents into its system, create a dummy database and allow the legal team at the firm to log in to the vendor's system and test the software before committing to the vendor for the duration of a large document discovery project.

Take It From the Top

From the plaintiff's side of the table, e-discovery often can help leverage a case prior to filing the complaint itself.

At the New York City office of Lovells, the sixth largest international law firm, attorney Kathy McFarland knows the power of the growing use of e-discovery tools. Charged with evaluating multiple potential conspiracy and fraud claims arising out of a complex multi-party transaction, McFarland's firm decided to test its legal theories in a review of 35GB of restored e-mail data. Because traditional electronic review would have cost \$4 to \$5 million and taken a year to complete, the firm also decided to use Attenex Patterns (www.attenex.com) software for the document

review based on the recommendation of FTI Consulting. The document review process was followed by a transfer of relevant documents to an FTI Ringtail Solutions database.

According to McFarland, the Patterns review took five junior associates six weeks to accomplish. E-mail custodians were ranked for interest and their data loaded and deduped by priority. Reviewers then worked on targeted assignments of no more than 2,500 e-mails.

Lovells also "seeded" assignments with text from known key documents to force clustering of related drafts, presentations and discussion threads. Reviewers mined the Attenex clusters, marking documents for review if they explained a fact pattern, or advanced or weakened a legal theory. The review isolated 4,500 highly significant documents. Another two weeks culling through e-mail records produced an additional 6,000 documents for review. The balance of relevant documents was assigned one of seven subject matter codes and carried

over to Ringtail, which is used internally at Lovells.

"I was able to use the information to develop different strategies and draft a stronger complaint than I could have," McFarland said. "I tested my ideas early on and put my client in a much stronger position right from the beginning."

Although familiar with Ringtail, McFarland had never heard of Patterns until FTI recommended Attenex. After Patterns identified approximately 11,000 key documents out of nearly two million pages, taking McFarland from review to detailed subject matter

coding in three months at 75 percent cost saving for her client, she now is sold on adding it to her list of e-discovery favorites, which include FTI, Kroll Ontrack and LexisNexis Applied Discovery.

"Attorney time costs money, and this review allowed me to target attorney time effectively, selecting only information-rich documents for [attorneys] to look at," she said. "We went through about two million pages in six weeks."

One thing McFarland said she particularly appreciated was being able to connect various concepts from the e-mail record directly to a set

of legal problems. The reviewers were asked to take on a problem set and use decision-making strategies. According to McFarland, the attorneys became very involved and excited during the review process. Reviewers working in a room together began sharing ideas and collaborating with each other.

Blending the Patterns review into the Ringtail database allowed for a backup review, and will help make documents easily available for deposition preparation, attaching documents into chronologies, using documents as deposition exhibits, linking documents into video depositions and

E-discovery Vendors

In the past few years, the number of e-discovery vendors has increased dramatically. Below is a listing of just some of the e-discovery software, services and consulting offerings available.

Alpha Systems

www.alpha-sys.com
(800) 732-9644
458 Pike Road
Huntingdon Valley, PA 19006

Altep Inc.

www.altep.com
(800) 263-0940
100 North Stanton Street, Ste. 1350
El Paso, TX 79901

Attenex Corp.

www.attenex.com
(206) 373-6565
925 Fourth Ave., Ste 1700
Seattle, WA 98104

Capital Legal Solutions

www.capitallegals.com
(877) CAP-LGLS
150 S. Washington Street, Ste. 500
Falls Church, VA 22046

Capitol Digital Document Solutions

www.capitol-llc.com
(916) 449-2820
555 Capitol Mall, Ste. 540
Sacramento, CA 95814

CaseCentral

www.casecentral.com
(800) 714-2727 ext. 242
760 Market Street, Ste. 200
San Francisco, CA 94102

Compulit

www.compulit.com
(800) 858-4536
4460 44th Street, SE
Grand Rapids, MI 49512

Cricket Technologies

www.crickettechnologies.com
(888) 635-1554
12310 Pinecrest Road
Reston, VA 20191

Daticon Inc.

www.daticon.com
(800) 676-2215
11 Stott Ave.
Norwich, CT 06360

Discover-e Legal

www.discover-e-legal.com
(503) 595-9487
610 SW Alder, Ste. 220
Portland, OR 97205

Docuity Inc.

www.docuity.com
(203) 226-1450
155 Post Road East, Ste. 5
Westport, CT 06880

DocuLex Inc.

www.doculex.com
(863) 297-3691 ext. 209
203 Avenue A., NW, Ste. 300
Winter Haven, FL 33881

The DocuServe Group

www.edocuserve.com
(914) 220-6455
388 Tarrytown Road
White Plains, NY 10607

Electronic Evidence Discovery Inc.

www.eedinc.com
(206) 343-0131
3933 Lake Washington Blvd. NE, Ste. 200
Kirkland, WA 98033

eMag Solutions

www.emaglink.com
(800) 364-9838
3495 Piedmont Rd., 11 Piedmont Ctr., Ste. 500
Atlanta, GA 30305

Encore Lex Solutio

www.lexsolutio.com
(888) 389-1658
40 E. Virginia
Phoenix, AZ 85004

Extractiva

www.extractiva.com
(703) 729-7664
1025 Boros Ct., Ste. 300,
Herndon, VA 20170

Fios Inc.

www.fiosinc.com
(877) 700-3467
921 SW Washington Street, Ste. 850
Portland, OR 97205

with electronic filings with the court, McFarland said.

Preparing for E-discovery


Given the same set of circumstances McFarland faced in the conspiracy and fraud case, she said she would again start her e-review early — prior even to the start of the case. By spot reviewing client e-documents early, McFarland said she can assess whether a case is strong enough to make pursuing litigation worthwhile. She said she recommends attorneys incorporate e-discovery planning as part of their long-term trial strategy, using e-discovery techniques to test

proof in the case prior to trial whenever possible.

When choosing a vendor, she said it's important to determine how the vendor will explain the software use to the staff and how well the vendor understands attorneys' issues. "It's still a legal process and the lawyer should still control it," McFarland said. "Vendors will make a great presentation to the lawyer, but the lawyer should then talk to the vendor's tech person as well."

Citing FTI as a good example, McFarland pointed out how crucial it was in her recent case for FTI to transition the 35GB of data from Patterns

to Ringtail in a smooth and easy manner. The transition was accomplished within 24 hours, and the legal team then was able to change the presentation, highlighting discovery advantages of the Ringtail software to make review a simple process.

With the average client producing an estimated 96 percent of its documents in electronic format, a simple, effective review and production process can make all the difference. 

Janet Roberts is a senior news and information specialist in the Department of Marketing & Communications at Case Western Reserve University in Cleveland, Ohio, and a freelance writer. She is currently working on a master's degree in Communications at Edinboro University of Pennsylvania.

* This is not a comprehensive list of e-discovery vendors. Please contact your local vendor for more information.

Forensics Consulting Solutions

www.forensicsconsulting.com
(602) 992-3600
411 North Central, Ste. 170
Phoenix, AZ 85004

Guidance Software EnCase

www.guidancesoftware.com
(626) 229-9191
215 North Marengo Ave.
Pasadena, CA 91101

IE Discovery Inc.

www.iediscovery.com
(800) 656-8444
9101 Burnet Road, Ste. 202
Austin, TX 78758

Image Capture Engineering

www.imagecap.com
(800) 376-6989
8710 F St., Ste. 128
Omaha, NE 68127

InFocache Corp.

www.infocachecorp.com
(212) 924-9299 ext. 302
134 West 26th Street
New York, NY 10001

InterLegis Inc.

www.interlegis.com
(214) 468-8800 ext. 205
2200 N. Lamar, Ste. 307
Dallas, TX 75202

Kiersted Systems

www.kiersted.com
(866) 543-7789
601 Jefferson Street, Ste. 320
Houston, TX 77002

Kroll Ontrack

www.krollontrack.com
(800) 347-6105
9023 Columbine Road
Eden Prairie, MN 55347

LexisNexis Applied Discovery

www.lexisnexis.com/applieddiscovery
(877) 613-3010
13427 NE 16th Street, Ste. 200
Bellevue, WA 98005

nMatrix Inc.

www.nmatrix.com
(212) 225-9200
11 West 42nd Street, 11th Floor
New York, NY 10036

On Site E-Discovery

www.onss.com
(703) 276-1123
832 North Henry Street
Alexandria, VA 22314

Planet Data Solutions

www.planetds.com
(914) 333-0670
555 Taxter Road, Ste. 150
Elmsford, NY 10523

Renew Data

www.renewdata.com
(888) 811-3789
9500 Arboretum Blvd., Ste. L2-120
Austin, TX 78759

SPI Litigation Direct

www.spitech.com/litdirect.html
(602) 485-8188
11400 Burnet Rd., Building 5, Ste. 5110
Austin, TX 78758

Stratify Inc.

www.stratify.com
(650) 988-2000
701 N. Shoreline Blvd., Ste. A
Mountain View, CA 94043

True Data Partners

www.truedatapartners.com
(626) 403-1600
1100 El Centro, Ste. A
South Pasadena, CA 91030

Uniscribe

www.uniscribe.com
(877) 225-3229
187 Danbury Road
Wilton, CT 06897

Xact

www.xactids.com
(913) 362-8662
5410 West 61st Place
Mission, KS 66205