

## **Recommended Practices for Document Review Workflow**

**By Ron Best and Dean Gonsowski**

The process of litigating is simple: Know the law. Get the facts. Apply the law to the facts. Tell a compelling story.

In the paper world, “getting to the facts” was routine and predictable, with generally understood scope, costs and risks. With the explosion of electronic data and the evolution of ever more complex systems, “getting to the facts” is no longer routine and predictable. Data volumes and complexity have driven costs to unsustainable levels, and the risks (omission, spoliation of data) can now adversely impact the merits of a case and the reputations of both client and counsel. The concept of workflow development can help reign in costs and mitigate risks for document review projects.

Building workflow involves:

1. Breaking projects down into common subparts;
2. Analyzing each step to identify goals and options;
3. Building standard approaches for each element that lends itself to repetition;
4. Accommodating flexibility for elements that are fact specific; and
5. Using actual experience to improve the process.

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## **Is an Integrated e-Discovery Solution the Best Approach?**

**By David Deusner**

**T**he e-discovery market is changing at an ever-increasing rate. Almost daily, we hear news of a merger between two vendors with talk of providing an integrated solution for law firms. Indeed, integration has quickly become one of the buzzwords of 2010.

With law firms increasingly feeling pressure to adapt to client demands to reduce bills and expenses, an integrated e-discovery solution may seem like a wise investment. Having fewer vendors providing necessary services is always beneficial. It means less administrative overhead, less potential for miscommunication, and less time spent training staff on new software. However, when it comes to e-discovery, an integrated solution may not always provide a law firm with exactly what it needs. An integrated e-discovery platform must provide the firm with the ability to process, review, analyze and then produce electronically stored information (“ESI”) in a consistent, defensible and economically sensible manner. This is of paramount importance. Without understanding the many nuances involved in each of these phases, a law firm may quickly find out that it has purchased an integrated solution that fails to perform an essential task. At that point, the firm is faced with outsourcing this essential task or purchasing standalone software, defeating the purpose of investing in an integrated solution. In light of this, firms should carefully consider the essential software components for each phase of the e-discovery life cycle before investing in an integrated solution.

### **ESSENTIAL COMPONENTS FOR ESI PROCESSING**

Processing ESI is one of the biggest hurdles for any e-discovery solution. Data comes in many forms and formats, and often requires many steps in order to be made ready for analysis. Removing duplicate copies, especially of e-mails, is also crucial. An integrated tool must address all of these issues.

When it comes to the processing phase, law firms should consider whether an integrated solution provides the following:

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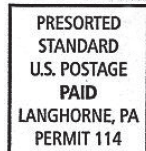
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## Integrated e-Discovery

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- **Identification of File Types.** Obviously, the most basic function of a processing application should be to identify files by file type, and truthfully, most solutions readily perform some level of file type identification. However, file extensions can often be misleading. A better tool can process files by analyzing their contents, not simply their extensions.
- **Unpack Container Files.** ESI almost always includes .zip files and other container files. Technically speaking, e-mail is also packaged in a container file — a .pst file. Thus, at a minimum, a processing tool should be able to unpack and extract the packaged files, including e-mail attachments.
- **De-nesting Capabilities.** De-nesting is a term for removing certain known file types that are considered non-relevant from a collection. Most often, these are system files from the originating computer and have no significance to the ESI. De-nesting a collection set can substantially reduce the number of documents that will need to be reviewed, saving time and money.
- **De-duplication.** De-duplication is an increasingly popular buzzword in e-discovery. In the past few years, new tools have come to market for suppressing duplicates of e-mails, files, and even instant messages, as well as other forms of communication. At a minimum, however, standard de-duplication — that is, suppression and segregation of e-mails by custodian and across a project — should be considered, as it can greatly reduce the total number of documents for review.
- **Image Conversion.** Another topic generating buzz in the industry is the use of native files for review, as opposed to a law

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firm's ingrained practice of first converting the native file to an image format. This certainly makes sense from a cost standpoint, and it is entirely likely that with advances in technology, we will begin to see more native file reviews. However, many lawyers still take comfort in a Bates-stamped image file — one they can print and hold in their hand. This practice will not likely die out anytime soon. Because of this, an integrated tool should convert ESI into a fixed image format.

- **OCR.** The old saying “*garbage in, garbage out*” applies broadly to the e-discovery lifecycle. A review and analysis — especially the use of keyword searching — is only as good as the data one can apply terms against. The industry as a whole has not yet moved past the use of documents that may have been produced in previous litigation as non-searchable image files. Moreover, certain .pdf files may be non-searchable by default. In order to increase the viability of the review process, these types of documents must be OCR'ed in order to extract the text. An integrated tool that does not offer batch OCR capabilities should be viewed with caution, unless the law firm has deemed this function unnecessary.
- **Generate Load Files.** Review applications use load files to understand the correlation between the processed files or images, the associated extracted text, and any work product that is applied to the corresponding ESI. Think of a load file as the central nervous system — it tells all the moving parts how they function together. The ability of a processing solution to generate load files for the most common platforms on the market today is essential. In an integrated solution, the processing portion would ideally create a load file for the integrated review function. However, it should also be able to create other load file types for production purposes.

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# How Technology Can Drive Effective Case Collaboration

By Matthew Hurd

Imagine a world where technology exists to help attorneys prepare for trial without the usual aggravation involved with coordination and case administration associated with deposition review. What if there was a solution available that could ease issues associated with printing and highlighting stacks of documents, shuffling them back and forth between opposing legal teams, and hoping that the lengthy process did not induce errors?

Reviewing depositions and documents faster and more efficiently is critical for law firms in the face of increasingly complex and arduous litigation processes. While many firms are already using collaboration tools to promote and facilitate ongoing interaction across legal teams, it has also introduced new challenges. Predominant among them: How can legal teams and counsel leverage technology to collaborate and more efficiently manage case administration and trial preparation while keeping costs at a minimum?

Faced with handling a case involving more than 125 depositions — more than 60 of which were out of state — brought this issue to my immediate attention in the early part of 2010. Managing and sharing pretrial case content is one of the most time-intensive, paper-heavy processes across the entire litigation lifecycle, making deposition designations a nightmarish practice, regardless of the size of your firm. Although we already employed litigation support software to create electronic copies of each deposi-

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tion, there were several needs that were left unsupported. For one, we were unable to share this data back and forth electronically in a way that would more effectively manage this time-consuming process. Additionally, we needed a way to identify themes and similarities between all of these depositions as we built our case. With the potential need to call 60 witnesses for statements via videotape, we needed a quick, efficient way to dig through, designate and distribute these documents to the appropriate audiences.

After conducting extensive research and engaging in conversations with multiple vendors, our solution came in the form of a Web-based trial preparation tool from TrialGraphix called Ontrack Prepreview. Using this new solution, our attorneys were able to quickly review hundreds of pages from anywhere via the Web in preparation for upcoming trial without involving a paralegal or secretary, effectively freeing them up to focus on other important projects. Having the ability to search across all depositions, quickly create designations, and generate reports saved us hundreds of man-hours that would previously be spent on highlighting and reviewing paper transcripts. Simultaneously, the tool reduced the potential errors frequently observed as the result of manual handling of depositions, counter depositions and testimonies. The functionality within the application also made the exchange process a snap. We were able to export or print just about any type of report imaginable.

The incredible ease of use and reliability not only impressed our team and the opposition, but also received praise from the judge. We were able to provide her with a secure login and password so she can also electronically access the depositions quickly and easily when the case goes to trial, saving her the time it would take to manually file and pull up those documents every time there was a ruling. From a green perspective, the tool eliminated the need to make and store color copies.

So, how did it work and what benefits did we see as a result?

- **No Installation Required.** In contrast to locally installed soft-

ware that demands an in-house IT staff to set-up, configure, update and provide help desk support, Ontrack Prepreview allows the user to create case secure access for as many users as necessary on a low-cost, per-case basis. Bypassing the software installation process allowed us to access the platform and load, review, annotate and share deposition transcripts within minutes. No more waiting for a litigation database to load, worrying the firm server is running out of storage, or needing new licenses to give access to additional members of the legal team — resulting in significant time and cost savings.

- **Reviewing Transcripts in Minutes.** Once you have created a case, you can start loading transcripts directly through the Web. Loading a deposition is simple and is available for review in minutes. Administrators can also control which depositions are available for the team to review, as well as load others into the application while leaving them in a “non-active” state so non-admin users are not able to access them.
- **Providing Access.** Once transcripts are loaded, inviting users to participate in the review is simple. The application has an invitation process that only requires you to provide the e-mail address of the user you would like to invite. After receiving the e-mail and following three simple steps, users can then participate in the review.
- **Seamless Integration.** Once Ontrack Prepreview was up and running, we developed our proposals and sent the documents electronically to the opposing team in an exchange review set where they were able to make their comments and immediately return them. For our internal measures, there were times when one team member noticed a red flag in a deposition they were reviewing and needed to share it with a team member who was out of the office. With this solution, our entire team could

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## Case Collaboration

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remotely access the platform and both see the changes and make their edits in real-time, regardless of their location.

- **Access from Anywhere.** Web-based platforms like Ontrack Prepreview provide access from any location with Internet access. As a result, every team member is working on the same case documents at all times — whether from a courtroom, the law firm, the airport or even their home. This eliminates synchronization issues between online and offline databases and ensures the efficient management and sharing of demonstratives. In addition, because we were able to directly access the application from a Web server, we did not experience the performance issues often associated with connecting to the office through a VPN.
- **Ongoing Ease of Use.** Another unique functionality of Ontrack Prepreview is the intuitive and interactive interface that makes getting started easy, even for non-technical users. Anyone with basic Internet familiarity can get

started quickly without substantial training. Furthermore, creating designations is as simple as highlighting a portion of text. Once a designation is created, it is updated on all users' screens in real time. Put simply, we now have real-time collaboration across legal teams with fewer errors and at lower cost.

- **Streaming Synchronized Video.** The Transcript Manager tool in Ontrack Prepreview allows teams to review transcripts and deposition videos from anywhere. Teams no longer have to carry an external hard drive or connect to their firm's network in order to gain access to the video testimony. This tool also eliminates the need for litigation support teams to transfer video files and store them in multiple places if they are working in multiple locations. In our case, Transcript Manager provided easy access to streaming video synchronization, which significantly reduced the burden of case administration and user support.

Now compare this streamlined, simplified process with how deposition designation and trial preparation works at most law firms. Each

party manually reviews and highlights a deposition and then makes a color copy. After this, the deposition is sent to the plaintiff to provide their counter designation, print another color copy and send it back. Without even counting the number of copies made for clients, witnesses, experts and the judge, there are hundreds, if not thousands of pages of paper that are shuffled back and forth and ultimately trashed. While not an exact science, you can imagine the paper savings with a simple equation:

$$[\text{Average \# of Pages per Deposition}] \times [\text{Average \# of Copies Printed}] \times [\text{Number of Depositions}] = \# \text{ of Pages Saved}$$

$$[60 \text{ pages on Average}] \times [4 \text{ copies printed on Average}] \times [125 \text{ depositions}] = \text{approximately } 30,000 \text{ pages of paper saved}$$

As the litigation landscape continues to grow, there is no doubt that using technology to drive effective document collaboration can simplify the way law firms manage their cases and interact with legal teams and counsel, whether local or overseas.



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## Practice Tip

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The following recommended workflow and overview of important factors for each phase can help reestablish predictability and transparency for document review projects.

### EARLY CASE ASSESSMENT ('ECA')

ECA can mean different things to different people. For review workflow, it involves:

1. Knowledge about preservation and collection activity, best recorded in a log or system;
2. Access to information about the nature of the data (volumes, metadata); and
3. Access to substantive content for initial liability and damages assessment.

All this is necessary for estimating project scope, preparing for early meetings of counsel and discovery conferences, and preparing initial risk

evaluations for the client. Tools today offer varying functionality. The following features are particularly useful:

- **Discussion Threading.** Groups related e-mails and identifies characteristics such as common phrases;
- **Topic Clustering.** Groups related documents based on text content;
- **Participant Analytics.** Shows lines of communication and document volumes;
- **Term Analytics.** Shows stem and wildcard variations and document volumes, useful for search term analysis;
- **File Analytics.** Links files with identical content found in different contexts;
- **Filtering.** Shows the distribution of the collection or search results across different metadata fields; and
- **Near-Dupe Analytics.** Permits finding like records or text, useful for batching and quality control.

Users leverage such features to begin identifying groups of data to move through the review workflow. ECA may be done on samples or data sets known to be implicated by the matter, such as e-mail for key players. A system of folders and tags is ideal for managing and documenting the process. Use folders as containers of convenience that can carry case-specific labels, and build tag trees for marking folder contents — for example, “move to culling” or “hold for further scope negotiations.”

### CULLING

The goal of culling is to systematically remove populations known or likely non-responsive or low-value data from potential review. The benefits can be profound, as the cost to produce a document through “eyes-on” review can run as much as \$3.00-\$5.00, and there can be as many as 7,500 documents in one gigabyte of data. Further, industry standards show that significant amounts of

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## American LegalNet's eDockets

By Curt Meltzer

I have been CIO of three different large, multi-jurisdictional law firms, in addition to consulting with hundreds of firms in over 25 years in the legal technology industry across North America. I have found that every firm has docketing challenges, including policies, compliance and multi-jurisdiction requirements. Successful docketing system implementations combine a rigorous procedural methodology with change management techniques. They must also minimize the effort required by lawyers and secretaries to maintain the database. I have seen many instances when one or more of these requirements are overlooked, and the effort to correct the issues can easily surpass the initial implementation effort.

The docketing process can be highly risky. When a law firm's docketing and calendar workflow is undefined or loosely structured, the firm is left vulnerable — vulnerable to missing deadlines, losing track of e-filings, or submitting out-of-date or unofficial forms. Further, time-consuming paper reporting, inconsistent database and deadline management and a lack of integration with other critical programs (such as time and billing systems, conflicts checking and document management systems) cannot only diminish a firm's workflow efficiency, but also increase its risk.

I have reviewed and implemented numerous docketing systems over the years. With eDockets, American LegalNet has tackled these challenges. eDockets was designed to automate

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docketing while accessing up-to-the-minute court rules and federal, state and agency forms. eDockets makes scheduling court dates and deadlines more foolproof while allowing attorneys to keep their work and personal calendars current. All of these tasks are executed through an easy-to-grasp user interface. eDockets can be part of a firm's Business Process Improvement ("BPI") initiative. As clients look for greater efficiencies and cost management from their outside counsel, BPI efforts will be critical to a firm's financial success.

### **EDOCKETS FEATURES**

Some of the key features of eDockets are:

- Docket and calendar tracking;
- Court rules sets;
- Multiple options for reporting and notification;
- Integration with Outlook Calendar and Forms Workflow;
- Web 2.0 format;
- Auto Docket e-filing notifications from Case Management/Electronic Case Files ("CM/ECF"); and
- Enhanced security features.

Part of its intuitive nature comes from the Web 2.0 format that allows users to work in eDockets from the office, courthouse or home, 24/7, through an Internet connection. Its flexibility is an enormous advantage not only from an access but also a training point of view. The program's extensive use of straightforward drop-downs and other user-friendly tools speeds training and adoption time for most firms.

eDockets features extensive rules — the program currently has a date calculator and/or rule sets for 50 states. Federal and judges' rule sets are also available.

eDockets integrates fairly easily with other key law firm programs including American LegalNet's Forms Workflow (a library of U.S. federal, state and agency forms), Microsoft SharePoint, and in some states, American LegalNet's eFiling Portal.

### **NAVIGATING EDOCKETS**

With its simple, logical tabs, navigating eDockets is easy for users and administrators. A guide to using eDockets follows.

**The eDockets Home Page.** From the eDockets Home page, users can open cases through the "History"

box that lists the last 10 edited cases, open or create a case, open or create a client/matter, or access an event through the "Open an Event" field.

**Creating Client and Matter.** eDockets offers several different ways to create and update client and matter information. The user can either manually edit or enter the applicable client/matter number, or firms can choose to have client and matter data imported into eDockets from a database, such as their accounting system, directly from a flat file.

**Creating Cases.** Building an eDockets case is a two-step process, and, once created, the case-level view provides a quick snapshot of dockets, events and assigned attorneys. An unlimited number of attorneys and staff members can be listed on an eDockets case or event. This is unlike other programs that limit the number of people that can be assigned to a case.

Time zones are determined by the location of the case. eDockets calendared events will automatically adjust for attorneys located in different time zones. Even if some attorneys on the team are in San Francisco and others are in Washington, DC, they and their assistants need not worry about manually changing time zones in Outlook.

**Dockets and Events.** Besides the ability to create both court rule-related and non court rule-related dockets and events, firms can take advantage of eDockets' out-of-the-box field design as well as the numerous features that can be tailored to make the product more pertinent for a firm's environment and workflow. For example, the "place" field can be used for the address of an event, and the "description" field can be used to include information relevant to the meeting. This data can then be pushed out to the calendars of the attorneys and staff involved with the case. Another example: attorneys who are not assigned to the case can be added to events, and, conversely, attorneys who are assigned to the case can be excluded from events if they do not wish to receive Outlook notifications or reminders about the event.

**eDockets Calendar.** eDockets calendared events can be viewed by

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## eDockets

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day, week or month. The calendar can be filtered by attorney or team so staff and lawyers can see only the events and deadlines that matter to them. With the correct security settings, attorneys can also check their colleagues' calendars to determine their availability for a particular event or meeting.

**Outlook Integration.** eDockets integrates with Outlook. Event notifications can be adjusted on the case level or for individual events, and reminders can be added to further customize events for one or more attorneys assigned to any event.

**Reports.** eDockets offers a fairly rapid report generator that allows lawyers to be more responsive to clients. Reports can also be created for case or matter events, and those reports can be exported as Excel or .pdf files. eDockets is SQL-based, so firms can also use other reporting tools such as Crystal Reports and Microsoft's Report Services. These reports can be filtered and sorted in various ways, even by excluding some people from receiving a report.

**Court Rules.** eDockets' court rules integration is a critical feature and is updated monthly by a team of licensed attorneys. Court rules are constantly changing, and eDockets maintains up-to-date court rules in all 50 states. Like other components of the product, associating court rules with a case is straightforward. A user only has to enter three or more letters of the court's rule set or code or three or more letters of the

court's name. Then, eDockets' "smart type ahead feature" suggests court rule sets in a drop-down list. Users can feel confident the correct events have been docketed without having to look up every single rule.

**AUTODOCKET®.** As stated earlier, it is critical to minimize the amount of effort that the legal staff spends on docketing. I have found that with eDockets' AUTODOCKET feature, users can create a docket entry directly from a court's e-filing receipt. This is a unique time-saver. Federal courts now require e-filing, but processing those e-filing court receipts can take a great deal of time and effort. Usually, once the court sends an e-mail, the user must print it, determine the case, open the calendar, log on to PACER, download the relevant document or documents, and then distribute the documents to the right people. If an attorney cannot locate the appropriate document right away, he or she may log on to PACER to print them out again, running up additional costs.

With eDockets, docketing court e-filing receipts is streamlined. eDockets' patent-pending AUTODOCKET feature scans and translates incoming court e-filing receipts. The user need only select a link in AUTODOCKET to convert the information into a docket. AUTODOCKET not only automates docket creation, it also pulls documents from PACER and attaches these files to a docket entry. In addition, notifications and e-mails sent to an attorney's Outlook Inbox will contain links to the PACER files attached to the dockets. For a busy litigator, this feature alone can save hours of time each month.

**Attorney Change Utility.** A hallmark eDocket feature is the "Attorney Change Utility." One of the greatest challenges firms face with docketing is when attorneys join the firm, leave the firm, take a leave of absence or are reassigned. When changes happen, updating cases is generally time-consuming and tedious.

With eDockets' Attorney Change Utility, an authorized user can easily see which cases need to be re-assigned to which attorney. Users can add, delete or replace attorneys, allowing centralized control for assigning an attorney to a specific case. This type of blanket system makes the process more palatable and reliable than other systems that require more manual changes.

**Reminders.** With eDockets, users can send an unlimited number of reminders by firm, attorney or case.

**The Admin Tool.** Another plus for docketing managers is the Admin Tool, which provides behind-the-scenes control for eDockets' security, settings and tools. The Admin Tool allows for creation of groups with specific permission settings, customization of the product, and is easily hidden from the general user population.

### CONCLUSION

Docketing and calendaring can be a difficult process that is prone to errors. With eDockets, the process can be streamlined, increasing flexibility and efficiency while saving time and eliminating opportunities for mistakes. The result should be the reduction of risk, increased levels of client service, and greater business success.



## Integrated e-Discovery

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All of the above are features that law firms should expect to come standard in an integrated processing solution, but that might not be the position of the vendor. Law firms should diligently review the specifications of any integrated solution they are considering to ensure all required features are indeed part of the platform.

### ESSENTIAL COMPONENTS FOR ESI ANALYSIS

In recent years, many companies have developed advanced tools that

supplanted the need to perform a traditional linear review of ESI and thereby substantially decreased the time and cost associated with this phase. Analytical tools have been developed that provide the ability to quickly assess and display intelligence about the data set as well as individual documents within it. And tools are constantly being created and developed to extract as much intelligence about the data set as possible. Yet, certain review and analytical tools can be viewed as essential, especially when a law firm is considering investing in an integrated solution.

A law firm should consider whether an integrated solution provides

the following features for the review and analytics phase of the e-discovery lifecycle:

- **Conceptual Review.** Though some might consider conceptual review as a luxury, the increasing volume of ESI that law firms confront makes this a mandatory feature of an integrated solution.
- **Conditional Coding.** Often during the privilege review process, documents identified as privileged are not withheld and end up coded for production. The common culprit in this situation is generally the tagging or coding

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# Integrated e-Discovery

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structure. Conditional coding solves this problem by allowing the administrator to enforce certain tagging rules. Thus, if a reviewer tags a document as privileged, it cannot also be tagged for production. Conditional or forced coding should be considered as part of any integrated solution.

- **Dynamic Folder Creation.** A review tool is only as good as the organization imposed upon it, and the ability to segregate and identify ESI by groupings based on rules, similarity or other information gleaned from the document is vital to ensuring the efficiency and effectiveness of the review.
- **Review and Redact Native Files.** This tool decreases costs not only by foregoing the need for converting ESI to image format for review, but also by eliminating the need to invest in the underlying software for each native file in order to view it. However, a native file review capability, without being able to redact those same documents, is useless and an integrated solution should provide both capabilities. With reviews increasingly moving into this standard and the investment required for an integrated solution, ensuring this capability is paramount.
- **Administrator Management.** Increasingly, litigation support departments are utilizing project management tools and practices to bring increased efficiency to the review phase. An integrated solution should enable administrators to assign and delegate tasks, track review progress, provide oversight to the quality control process and automate the review workflow. The ability to manage the review from within the application is critical as it adds a further layer of risk mitigation to the process, while also substantially increasing the efficiency of the overall process. For a firm with disparate office locations, this is particularly beneficial, as it can allow for increased collaboration among those locations.

- **Fuzzy Logic Search.** As mentioned above, search tools are only as good as the data they search against. Often in the case of OCR'ed documents, employing search methodologies can be under-inclusive due to various factors. Most common among those is simply that the OCR was not a completely accurate representation of the text of the document. Fuzzy logic searching can compensate for this — and misspellings in e-mails — by expanding the permissible results a search may yield.
- **Social Network Analysis.** Social network analysis is concerned with identifying and visually depicting the relationships between custodians by analyzing their communications, usually e-mail. There are numerous benefits to this type of analysis. First, it allows the reviewer to narrow the scope of review to essential communications and increases the contextual information from those communications. Second, by visually mapping these relationships, review teams may be able to identify custodians not originally deemed relevant to the matter. Social network analysis will only increase in relevancy as e-mail volumes increase, and for law firms that deal with matters involving corporate clients with numerous custodians, this analysis can provide invaluable intelligence.

## ESSENTIAL COMPONENTS FOR PRODUCTION

Some of the concepts above, such as the conversion of native files to images, redaction capabilities and OCR, are equally crucial for the production phase. Along with those features, a law firm considering an integrated solution should weigh the following:

- **Automated Electronic File Numbering.** As native file productions gain in popularity due to the cost savings associated with them, law firms will need tools that can electronically affix a unique identifying number to each document is vital.
- **Automated Electronic Image Numbering.** Unless and until a law firm invests in a solution

that can redact native files, conversion to an image file is necessary for production, to the extent redactions are needed.

- **Multi-party Production Tracking.** An integrated solution must have the ability to track, coordinate and easily replicate multiple or overlapping productions to various parties. This capability can drastically reduce the amount of time necessary to replicate a production to a subsequent party in a proceeding. It can also assist the firm with maintaining organization in complex matters.
- **Automated Exception Processing.** With any production, there are always exception files that require special attention, and exception reporting should not be overlooked. This functionality can drastically reduce the amount of time and money spent on productions.
- **Repopulation of De-duplicated ESI.** In certain situations, adding duplicative documents back into the final production may be necessary. In other instances, it may only be necessary to identify whether a particular custodian received an e-mail, for example. The ability to repopulate duplicate documents — or, at the very least, to identify them — is essential.

## CONCLUSION

As e-discovery vendors continue to merge in order to compete with the new entrants to the market and provide new and better solutions to law firms, the industry will see increased use of the concept of integration as a marketing and sales tool. With respect to the phases of the e-discovery lifecycle, a law firm's investment can be significant. Ideally, such an investment should account for prospective changes in technology and their implications. Therefore, while some of these features may see like costly luxuries, they will become standard in a few short years.



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## Practice Tip

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processed and/or reviewed ESI is never produced (sometimes as much as 80%-90%).

The process of culling involves the same folder/tag approach outlined above: Identify a potential set of data, copy it to a folder for tracking, analyze the data using ECA features and tag the records appropriately. For example, one might use domain filtering to mark large sets of e-mail with tags such as “likely responsive,” “privileged” or “non-responsive,” based on sender domain or name. The goal is a “reasonable” process, with an eye on proportionality to what is in dispute. The marking serves as documentation of the decision-making process and can be reported, supplemented or changed, if necessary, further bolstering a reasonable process and result. Other metadata useful for culling via filters include date, recipient domain, sender/recipient group/name, document type, custodian and language. For tools without filtering, the process can be done via search, but will take longer and is prone to user error.

### REVIEW SET CREATION

Building review sets involves executing searches on ECA and culling result sets based on tag values. Unfortunately, many practitioners

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jump right to search, missing the intelligence that ECA provides and the data volume reduction that culling can yield. Again, use folders as containers and document the contents. A key benefit of foldering is that subsets of data known to need review can begin moving through the process while other data is still being worked in ECA or culling.

A common approach for review set creation is application of search terms. When search lists are agreed upon, it is a simple matter of foldering results, accessing ECA features for possible bulk coding, and moving the remainder through batching and review. Without agreement, search-term development is best done using ECA term analytics and preparation of “hit” reports for gauging the appropriateness of hit volumes and content, and providing transparency given the greater level of judicial scrutiny in this area (see, *Victor Stanley Inc. v. Creative Pipe Inc.*, 250 F.R.D. 251 (2008) (poorly conceived or cursory privilege review risks waiver when privileged documents are inadvertently produced). It is best to start with a small list of terms, test variations, analyze results and further limit scope, when necessary, via proximity and qualifiers.

### BATCHING AND CODING

Batching is the creation of review subsets for eyes-on review and application of any required coding. Batching criteria can vary by case, but typically involves prioritizing and routing particular content to particular reviewers. Record all batching logic as part of subfolder labeling to help document and track the batch folder. A batching process such as this allows subsets of documents to move through eyes-on coding while other data may still be in the ECA or culling stages.

Reuse tested and stored tag trees for review status (responsiveness, privilege, confidentiality, redaction), importance (key/important/neutral/irrelevant) and issue codes on each matter through templates and save training time while minimizing coding errors. Fact-specific values such

as unique privilege or issue codes can be accommodated through sub-tag values, thereby offering customization within a standard process.

### QUALITY CONTROL

Quality control (“QC”) is necessary at each phase of a review project. Tools that allow filtering of folder contents and tag values can significantly reduce QC time and effort, as values and record quantities will display dynamically, obviating the need for creating reports. QC of review calls is particularly important for accuracy and consistency, and is best handled through sampling. Many tools will generate random samples of specified percentages from search result sets, and the same folder/tag combination can be used to build and mark QC sets. The QC folders/tags also serve as built-in documentation, if necessary, to defend process reasonableness and privilege screening measures, which can help avoid waiver in the event of inadvertent disclosure.

### PRODUCTION

Production involves identifying responsive, non-privileged material, and creating native file and/or image sets for delivery to the other party in the litigation. This may involve branding redactions and/or confidentiality legends, and should always incorporate some form of numbering for page and file identification. A standard workflow (*i.e.*, pulling from the same QC folders only those records with specific tag values) will help ensure that only documents intended to be produced actually are produced.

### CONCLUSION

The benefits of a structured, repeatable review workflow are many and include:

- Reasonableness, through standard and repeatable processes;
- Lower document review project costs;
- Fewer fire drills and delays;
- Faster and better results; and
- Greater defensibility of the e-discovery process.

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