

The Basics of Automated Litigation Support

The attorney calls you in to let you know that he has just heard from the firms client.

In response to the discovery request, your client has gathered over 100 boxes of paper.

Because the electronic files are coming from 4 locations, the company's electronic files from PCs and the network have been copied onto 73 CDs, 15 Jazzdrives, 22 zipdisks, and 34 floppies.

However, they may just provide you with back up tapes for the five year period covering email. Someone in clients technical department is still checking on it. Don't know how many tapes will result.

We do know the email contains a variety of attachments, which may include databases and embedded zipped files. The attorney will need to have these converted to files that can be printed to paper or image.

Oh, there are approx. 25 CD's of images from a department that starting imaging internal documents at the clients location a few months ago and they think they have around 37 rolls of microfilm, maybe some microfiche and perhaps, some aperture cards.

From the looks of the complaint, the judge didn't think it would take too long, so depositions are scheduled to start in approximately 90 days.

What do you do?

My son is a lawyer and I have a paralegal certificate, but neither of us remembers this part being taught in law school or paralegal school.

What this talk covers:

- the basic concepts, very broad scope of document processing and automation for large document management matters
- is designed to give you an overview of considerations in large document cases, or is what is affectionately known as complex document management. Note: however, these principles can be applied to any size case
- is not about the gory details of firm case management, nor the gory details of how to process every little step along the way
- this broad overview will give you concrete considerations of things you will be faced with and have to deal with.

Some of you will be very surprised to find there are so many considerations when trying to electronically automate a case like this.

Hopefully you learn how to manage expectations and keep your attorney focused on doing common sense things that will benefit and not hinder the research of images or data when you automate this or any case.

The scenario above is not unusual. Corporate America generally has more resources at their disposal than you do. They already have high powered machines, CD burners, Jazdrives, Zipdrives, scanners, tape backup systems and a variety of experimental toys, which were acquired along the way. You will often encounter difficulty in getting the corporate techies, who are already overloaded with internal requests, to think about organizing the data request in any logical way. It will generally be provided in the most convenient bulk method available.

Why and When to consider automation:

- when you receive a voluminous number of pages
- when the dollar value vs cost of the litigation is an advantage
- when your firm's client expects it
- when it appears right for this case, (ex: will there be lateral suits for same docs)

At some point you will need to estimate what things cost and the time frames to accomplish in order to coordinate with the case management schedule, ie, hearings, depositions, document productions, etc, etc. The quickest way to obtain an estimate is through an outside vendor. If you have in-house capabilities, you may also need to estimate those costs.

Planning Section:

How to get started:

Develop a check list for resources

Can you do it all or in part in-house

- depends on firms size and resources available
- availability to you or your attorney of those resources (these resources may not be available at the time when you need them, as they may be utilized to capacity on another matter or for a more senior firm member)
- user requirements (in-house counsel, client counsel, co-counsel, Joint Defense Group, site management, how many sites, etc - consider on-line repository)
- remote access requirements - consider on-line repository

At some point you should write a Request For Proposal (RFP) - at least for yourself, to make sure you understand what the scope of work is and to use if you need to send an RFP out for vendor response.

What goes into the RFP

- Firm name (and/or JDG - Joint Defense Group or other parties)
- Briefly history, what case is about
- What is the scope of work (what the firms needs are in general)
- Briefly what will need to be accomplished
- Collection estimates, schedules, deadlines, logistics, if known

Technical considerations:

- Imaging, Indexing, User software (discovery & trial), legal team expectations
- Database field name/outline

RFP expectations:

- Specify when RFP must be returned
- Specify how you want to see the format of pricing and caveats
- Ask about current management and personnel experience
- Outline the potential vendor selection process

EXECUTION SECTION:

Imaging considerations: (15,000 pages, 8 boxes, or a CD)

- match bates numbers to TIFF ID
- format standard Group IV TIFF or other
- dpi (dots per square inch - 300 recommended)
- undersized, oversized, post-it note handling
- color documents, black & white, gray scale (costs and size considerations)
- OCR (yes, no)
 - ◇ OCR what do you get (dirty)
 - ◇ OCR advantages - get up fast, full text available
 - ◇ chance to find keywords, names intext (time and cost comparison)
 - ◇ may be viable less costly substitute for title field or names/keywords in text

Indexing/Coding Considerations:

- Most important need is consistency and an solid understanding of the value of categories for research and review
- don't try to build a database that will try your case for you
- do build a database that will assist your research during discovery and trial
- write coding instructions, guidelines (manual) - if vendor says what's that, run fast
- time and cost considerations (summaries, mentioned names, keywords, etc)
- value for what your spending for the client (dollars and time)
- bibliographic vs subjective, value of each (define and explain)
- doctypes (the fewer, the better, generally not more than 15-20 for vendor coding, then add multi-entry or secondary field for refinements) DO NOT USE DOCTYPE FOR ISSUES, TOPICS, or SUBJECTS - it is for general categories, one must still review the document
- consider information from other fields (title, OCR, etc)
- field definitions (names, dates, etc considerations)
- names and orgs linked or just listed? (Software consideration - JFS)
- manuals, doc control and QC (Must have a coding manual)
- repositories (your firm, a JDG member, Co-counsel, a vendor, On-line Web-based)

Document Control:

- logging and control (very important - must start when materials received)
- continued tracking and analysis
- optimism vs reality in production
- time and budgeting

Vendor (and/or) in-house considerations

- Off site / on-site capabilities (if required)
- Get point to point project manager contact
- Experience of the project manager
- Logging and control
- Tracking forms and status reporting
- Schedules, targets, deadlines, interim delivery, drop deads
- Optimism vs reality
- Status reporting and management (do not trust your documents to the in-experienced)
- Quality Control (firm vs vendor)
- Rolling deliveries

How to handle email (Considerations)

- General discussion of how prolific (in email, people say anything, think its invisible, easier than a letter or memo to say things you wouldn't otherwise)
- Gain some perspective on how prolific
- June 11 , 2001 Law Journal Article
- Office workers exchange 2.2 billion emails per day
- Average backup tape is capable of storing 70 gigabytes data
- printed out - could equal close to 19 million pages of paper
- 83% of corps have not established a protocol for handling email (2000 ABA survey)
- Ability to recommend other resources
- Bid Comparison (Apples to apples - see chart)
 - ◇ comparing/deciphering vendor bids
 - ◇ comparison sheet / call the vendor
 - ◇ give yourself amply time for calls and comparison (not a perfect world)
- Specify how you want to see the bids
- specify cut-off date for responses
- expect calls from the vendors
- is offshore an option
- offshore considerations
 - ◇ domestic scanning
 - ◇ domestic logical document determination

Budgeting time and money (comment, your vendor should have this and be able to provide you with the results of the info). Show a quick estimate sheet here and talk about it. Note:

- Time study
- Allowance for QC, sup, l&c, tech proc
- estimate, ability to estimate
- Budget and ability to budget (show example)
- Bob and Tom war story(s)

Electronic Discovery:

While many firms have sufficient experience to handle a paper production, few are set up internally to deal properly with electronic data.

- truth and the myth
- software vs people handing
- soft dates problem
- TIFF vs paper
- lawyer strategy
- Emails (print one to a page, as a string, etc)

Vendor Management:

Working with a vendor: (recognize IT DEPENDS)

- we're just people too, treat at least above the used car salesman
- say what you mean, mean what you say
- not the enemy, unless a bad choice
- look upon and treat as part of the team (very important)
- be the point person on your end or appoint one
- be available for calls, respond as quickly as possible
- start up / ramp up (realistic expectations)
- managing internal expectations

Closing Remarks:

- Technology is here and available
- Technology is cheap by comparison
- Must select experienced vendor, just like picking a doctor or lawyer
- Use technology to your advantage during discovery

Trial usage:

- Some court rooms are already equipped
- Some Judges expect it
- Jurors may not understand without it
- More and more, clients expect it

Open Door Solutions, LLP is a Dallas-based company providing litigation support services and document management solutions to law firms and corporations nationwide. Author Bob Sweat received his education in Business Administration and Economics at the University of Wisconsin and advanced work at Purdue University. He holds a Paralegal Certificate in Civil Litigation with Computer Emphasis from The Center for Legal Technology, Milwaukee, WI, and has years of experience working with local and national vendors on large, complex litigations. Bob is currently a partner at Open Door Solutions.