



Litigation 101
Case Organization, Analysis and
Presentation in the Age of eDiscovery

The Big Picture

As law firms, government, and businesses from all sectors take more control of the eDiscovery and litigation process, it creates a demand for those who understand it best. The more you know about this changing market, your capabilities, limitations, and required technology, the more cases you can take on confidently, creating opportunities for your organization - and your career.

According to a recent Cowen Group study of 147 law firms, 67% of the respondents indicated their litigation and eDiscovery workload has increased over the last 12 months. These firms also reported on their two greatest challenges. The first was educating partners and attorneys about eDiscovery in order to be relevant and competitive advantage in their space. The second was improving departmental processes and workloads at their firms. Moreover, the demand for talent for those who can use eDiscovery and Litigation software is on the rise – and according to David Cowen, 63% of respondents have never used these tools and technologies.

Law firm clients (corporate counsel, consumers, and businesses) are looking for their counsel to be more knowledgeable around productivity and efficiency. They demand cost savings and cost predictability. This creates an opportunity for legal professionals who learn best practices in Litigation and eDiscovery to stand out, whether you're big law, mid law, small law, corporate or government.

In this white paper, we will give you tips, techniques and best practices for:

- **Increasing your influence:** What litigation experts need to know to remain indispensable in a changing marketplace
- **Making all the right moves:** Gaining greater insight into case data to help drive smarter, faster decisions around case strategy
- **Visual impact:** Bringing all the evidence together for more efficient, effective case presentations

WHAT TO ASK YOURSELF BEFORE YOU GET STARTED

The demand for talent in case organization, analysis and presentation is an incredibly important part of bringing your career forward. This is about workflow and understanding and becoming more productive and more efficient at what you do. Do you understand case organization? Are you more effective? Do you know the case analysis and presentation technologies out there? Because if your talents can benefit an organization, your marketability goes up and you can be a driver of change.

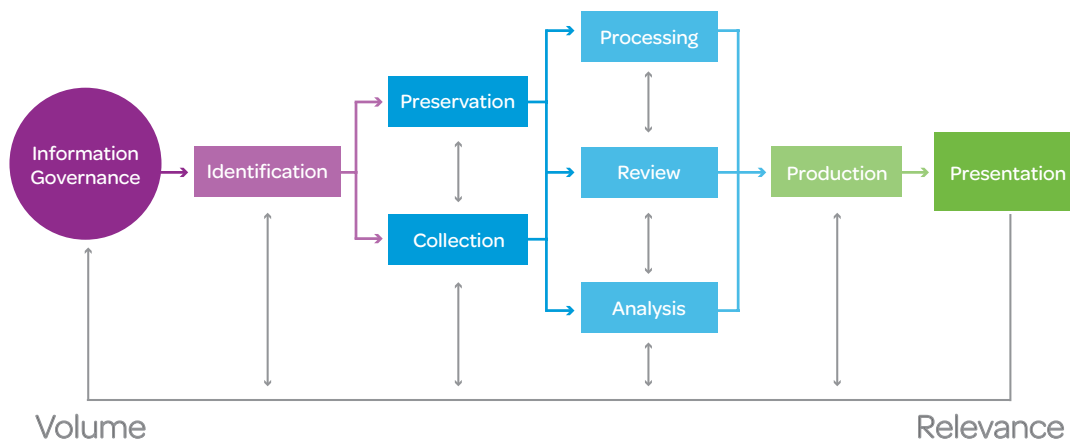
eDISCOVERY AND LITIGATION WORKFLOW: THE EDRM MODEL

The first step in better understanding case workflow is to understand the process and familiarize yourself with best practices. The most popular and often referenced model is known as the EDRM, or Electronic Discovery Reference Model. The EDRM is a published framework outlining standards for gathering and assimilating electronic data during discovery (For more information, visit edrm.net) and requires a plan of action to ensure that the budget process you implement aligns with and fully supports each of your objectives.

While everyone's workflow varies, in the end, all general tasks in this workflow need to be accomplished. Now and then, there may even be looping back, or tasks might be accomplished in a different order. As you can see, the left side of the EDRM model workflow focuses on processing and culling extraneous data, while the right side involves linking and organizing what's left into a meaningful presentation. As this process moves from left to right, the total amount of information decreases, while the relevance of what's left is steadily rising.

Many legal professionals who come to us have never heard of this EDRM model, or don't know much about the eDiscovery process. In addition, the EDRM model is a helpful place to start for those more versed in traditional Discovery.

Electronic Discovery Reference Model



EARLY CASE ANALYSIS: ASSEMBLE YOUR HAYSTACK

Starting with a wide universe of data, your initial evaluation helps you build a haystack, if you will, of relevant information. At this point, your information may be all over the place. Your information might be in HotDoc binders or physical binders. You may have them in document management systems, the cloud, or on numerous computers throughout your office. They might be on Post-it notes, legal pads, and all over desks in your various offices, perhaps in multiple locations around the U.S. or the world. You could have email folders. You might also have information stored in your head or in the mind of a colleague or some third party like medical office records, police stations, insurance companies, opposing counsel, or your client.

FINDING AND ORGANIZING YOUR 'NEEDLES'

After carefully reviewing your information for content or context, you're going to reveal your "needles" that are pivotal to your case. In arranging these needles into key patterns, topics, players, and stories, you will create a powerful picture and be able to display that accordingly before audiences so as to elicit further details, validate existing facts, and persuade.

Before you jump in, ask yourself, "Where are the needles I've collected and how do I best hone them so as to be efficient in my case management and organization?" Organization is a feat that stumps most. Firms of every size struggle with this and run into a few common pitfalls.

First and foremost, the process of collecting information can be inefficient. People may be on vacation or it's the weekend, or there are busy schedules and conflicts getting in the way of scheduling that deposition. And you're also going to five places trying to answer one question. Wasting time finding that information is not helpful because it's not billable and it's not helping you meet your hours. So you don't want to have to waste time finding it.

Lastly, especially with the rise of eDiscovery workflow today, working with those litigation partners that haven't adopted these eDiscovery platforms tend to cause more problems because your workflows are not meshing together. All of these factors can affect your ability to gather and mine the data to its utmost usefulness.



Ask the eDiscovery Expert

Suzanne Dinsmore is the Litigation Practice Operations Manager at Day Pitney, where she implemented processes around case organization and presentation.

“Once we get documents in the door, we already have a plan set as to who those documents are going to go to, and that the team has already trained on the software to do that. A lot of times, once that production is made, we will transfer what we see as hot documents into a case analysis tool in order to bring together the relevant facts, documents, and persons. And then that usually segues directly into a trial presentation tool. And we made sure that all of the different software types are able to communicate with one another, so, when we’re receiving it electronically it just maintains that electronic form and easily speaks from one software tool to the next.”

CREATE A LITIGATION READINESS PLAN

In order to effectively organize and analyze your case, keep remembering to ask yourself and your litigation team early and continuously, “Where are the needles I’ve collected, and how can I best hone them into a compelling argument for my client?”

Here is what trends in the market are showing us: Proactively implementing a litigation readiness plan can minimize the costs of eDiscovery, reduce response times in the event of litigation, avoid sanctions and other adverse consequences. This gives consistency across how your cases are managed and where information is stored. By determining what programs will be the core of your team’s workflow, your users can become experienced with those programs, and thus not waste time having to learn a new system each time a case gets started.

ADVANTAGES OF ELECTRONIC CASE MANAGEMENT

You can save time and money by having this eDiscovery information available electronically, such that you can search as well as preserve the information for later, and prevent documents from being lost or overlooked in preparation and research. By allowing software to store information, it takes care of the tedious and time-consuming task of tracking and memorizing that information, which leaves you free to think and strategize.

Simplifying to a single integrated solution that addresses a wider breadth of the EDRM stages provides benefits like preventing risk of file incompatibility, reducing difficulty transferring the data across platforms, and increasing speed in accepting that compiled information.

TECHNOLOGY'S EFFECT ON COURTROOM PRESENTATION

The fundamentals of trials have remained unchanged for hundreds of years. However, the effects of technology on the practice of law over the past two decades have been undeniable. This is nowhere more apparent than in courtrooms, as well as mediation and arbitration presentations. Computer-driven technologies and eDiscovery tools have had a substantial impact on the effectiveness and ease of case and trial presentation, along with the ability to create a detailed picture with one's needles that have been gathered and organized.

If you've never used trial presentation tools you might wonder, "When is a good time to do so? And how do they work?" The value of the presentation technology has no limit and with many tools becoming easier and more user-friendly, it's more common for individuals to be using these outside of a courtroom. They are using them in witness depositions and witness prep sessions so that their witnesses are comfortable on the stand when these tools are being used as well.

Ask the eDiscovery Expert

Suzanne Dinsmore has years of experience with trial presentation software, so here are a couple battle-tested tips:

"We also often bring an electronic overhead projector so that if a document comes up during cross-examination that we do not have in our computer system, the attorney can use it on the fly and still project it to the jury using the overhead projector. And we also often bring a laptop with our document database or case analysis tool on it so that if a question arises during the trial, we're able to search documents."

TECHNOLOGY'S ROLE IN SIMPLIFYING YOUR PRESENTATION

Think of trying to show a complex matter. You may have an expert topic that you need to demonstrate, like a medical issue. Or you may have a difficult chronology that you're trying to illustrate to your jury. You may also be trying to allow the jury to visualize a scenario or procedure. Being able to demonstrate these with visual tools can be very helpful. Also, you may need to have items for comparison, and your presentation tools can give you an effective way to do so, and while comparing items, being able to pull significant additional information up for display. Lastly, you may need to show multiple items or components at once. So for example, you may have a video clip and an exhibit to display with it, and having presentation tools can allow you to do so. Knowing how the tools operate and being comfortable with them will make you that much more valuable to your team.

GOING BEYOND POWERPOINT

While PowerPoint is a program familiar to many, its linear capabilities do not always accommodate for that ever-changing dynamic environment of the courtroom, or an arbitration or mediation. Dedicated trial presentation programs seek to overcome the limitations of PowerPoint while being optimized to meet the specific needs of litigators. Its flexibility allows for seamless adapting to presentations on the fly.

GETTING READY FOR THE BIG DAY

Remember when you took an important test and you were advised to check your commute and directions in advance such that you weren't frazzled on the big day? The same concept applies here. Scout your courtroom, mediation room or deposition room in advance with a pre-site visit. This is going to serve as a great opportunity to see how to set up your presentation and ensure that your room is configured for electronic presentations. Otherwise you can make arrangements in advance.

Be sure to secure the proper hardware components, like a monitor or projector. Usually you don't need to buy this hardware, you can probably rent the equipment for a specific trial or mediation, sometimes even from the court itself. Being able to do that in advance will make sure you're not stressed out on the big day.

PRACTICE, PRACTICE, PRACTICE

If you are just starting with presentation technology, consider using it first in a deposition or witness prep or smaller mediations first. This less-formal environment is going to provide an excellent arena in which to develop your skills and your comfort level. And further, it's going to allow you to maximize your investment in purchasing these presentation software tools; you're going to use them more frequently and they're going to become second nature, so you'll be able to adapt into your workflow that much faster.

Ask the eDiscovery Expert

Being prepared helped with an unexpected surprise from the judge, says Suzanne Dinsmore.

"I recently was on a month-long trial in New Jersey, and we used trial presentation software throughout the entire case. The judge during his jury instructions requested that I project a letter of intent that was the linchpin of the case. I had never received a request from the court that we present something, but I think it shows how our world is changing, and that courts prefer to see the document directly in front of them instead of the jury reviewing the binder in the jury room at the end of trial."

Rehearse as a team in as close to a duplicate setting as possible, as it helps to recreate the courtroom environment or make a war room in your firm's conference room. Coordinate with members of your firm. Recruit them early to serve on your case team such that you will have the support you need in the courtroom. Typically the attorney that is driving the trial is not also driving the computer systems during trial (aka, the "hot seat"). Being able to work together early and regularly will allow you ample time to strategize and rehearse with the case material. And it's also going to allow the individual running the hot seat to feel confident while they're running the platform with their trial presentation.

THE RISE OF MANAGED SERVICES

Another area in this muddled environment where you can become more indispensable is around the rise of managed services. That is, you must understand, big data and smart data, the convergence of privacy, security, and governance, new corporate standards in expectations, emerging technologies, new federal and state regulations, in addition to understanding when managed services make sense.

As David Cowen remarked, "You just have to be a little bit smarter than the next guy to be indispensable. You don't have to be a whole lot smarter, you don't have to be a subject matter expert, but if you just know a little bit more than they do. That's the beginning of indispensability, and that's the key to career advancement and career marketability."

MAKE TIME EVERY DAY TO LEARN THE LANGUAGE

One of the best things you can do is to reach out to vendors and service providers, have them come in, and have an exchange of ideas about what are evolving best practices. They should be part of your career advisory board. And understanding the industry helps keep you marketable and tuned up so that you can be of value to your organization.

CONCLUSION

The pace of technology advancement has always been much faster than those who sit down and take the time to adopt it. This is a repeatable phenomenon known as the Technology Advancement Curve, which scientists have been studying for many years. Of course, the legal industry is no exception.

Based on information provided by the Cowen group on adoption, eDiscovery and litigation technology is still in the steep initial ascendancy of the bell curve, with Innovators and Early Adopters leading the charge. As more organizations hop on the bell curve, those already familiar with the technology will be in a position of leadership, have the most potential to advance their careers, and be a positive driver of change at their organization.

We encourage you to become familiar with the eDiscovery & litigation software tools out there as soon as possible, so by the time the rest of the industry catches up, they will look to you for leadership.



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THE AUTHORS



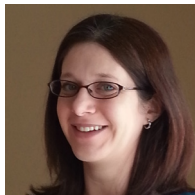
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LITIGATION TOOLS THAT CAN ASSIST YOU WITH CASE ORGANIZATION, ANALYSIS AND PRESENTATION:

ABOUT CONCORDANCE®

Review your document with Concordance discovery management software. Simply export relevant data from LexisNexis® LAW PreDiscovery to Concordance software. This software helps you manage and review the high volume of documents and allows your litigation team to search, review, produce and share litigation documents.

ABOUT CASEMAP®

CaseMap® case analysis software is used for effectively capturing, organizing and evaluating the relevant facts, players and issues in a case. CaseMap gives you the ability to share case research and insight across offices, making for easier collaboration. Most important, it ties all of the facts, issues and evidence together to help you develop your case strategy and compiles this critical case knowledge into a polished PDF report. Identify strengths and weaknesses in testimony.

ABOUT TEXTMAP®

TextMap transcript management software helps you manage depositions, locate key evidence quickly, identify strengths and weaknesses of testimony, and work with video transcripts and real-time feeds.

ABOUT TIMEMAP®

TimeMap timeline graphing software quickly transforms litigation details into polished visual timelines to help your litigation team, witnesses, clients, the judge, jurors and other key players understand the sequence of events in a case. You can easily send those timelines directly to CaseMap software for reference or Sanction® litigation presentation software for hearings, trials or other presentations.

ABOUT SANCTION®

Sanction litigation presentation software is a single resource to quickly assemble documents, exhibits, transcripts, visuals and video that will be used to present evidence throughout litigation; categorize them, and then create clear, polished and compelling presentation materials during hearings and at trial.

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