

O The Applied Discovery OrangePages

Electronic Discovery Newsletter

FEATURE STORY

"Prepare Early and Confer Often"

Advice from Federal Experts for Electronic Discovery Practice

Since the mid-1990s, a growing body of case law has developed around the most common electronic discovery issues: the duty to preserve electronic evidence, cost allocation, form of production, and application of the discovery rules to electronic data. As the case law has developed, parties have been provided with increasingly clear guidance from the courts. Now, much of the uncertainty that once surrounded electronic discovery practice is gone. Parties should no longer be asking whether they have to produce electronic information in discovery, or pleading to the courts that they should not be required to produce information in electronic form. Instead, they should be focused on how to adapt their familiar discovery practices to this new world of discovery. For the most effective electronic discovery practice, parties should follow this electronic discovery mantra—prepare early and confer often.

"Recent research at the Federal Judicial Center shows that three out of five magistrate judges have encountered electronic discovery disputes in the past three years. . ."

"The federal court system is made up of more than 1,200 district and magistrate judges who must exercise their own judgment in a quarter million civil cases in the system at any given time," notes Ken Withers, Attorney and Research Associate at the Federal Judicial Center in Washington, D.C. With the increasing focus on electronic discovery in the past few years, these judges demand that parties come to court prepared." Recent research at the Federal Judicial Center shows that three out of five magistrate judges have encountered electronic discovery disputes in the past three years," says Withers, "but the courts do not want to be actively involved in discovery unless it is necessary."

When disputes do arise, federal judges look to some of the most notable e-discovery decisions for guidance. "Cases such as *McPeck, Rowe, Residential Funding*, and *In re Bristol Myers Securities Litigation* now make up

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CASE LAW UPDATES

Physical location of records not pertinent to venue; records could easily be transmitted electronically

In re Enron Corp., 284 B.R. 376, 2002 Bankr. LEXIS 1198 (Bankr. S.D.N.Y. Oct 28, 2002).

A general unsecured creditor in the Enron bankruptcy moved for a change of venue of the debtor's Chapter 11 bankruptcy from the Southern District of New York to San Juan, Puerto Rico.

In considering whether to grant a motion for change of venue, the court noted that the presence of books and records in Houston or in San Juan was not a major concern because "with modern technology that information, which is ordinarily computerized, can be readily transported via electronic mail." The court observed that "technological advances continue to diminish the importance of the 'convenience' factor" in determining venue.

Request for sanctions for non-production of emails held premature

Kormendi v. Computer Associates Int'l, Inc., 2002 U.S. Dist LEXIS 20768 (S.D.N.Y. October 21, 2002).

The parties in this employment case jointly wrote the magistrate, requesting reconsideration and clarification of a prior order.

The court had ordered the defendant to produce all email messages mentioning the plaintiff for a one-year time period, with the plaintiff to pay the cost of the search. The defendant responded that it "had no method to locate and reconstruct emails mentioning plaintiff for the listed period, and its document retention policy calls for employees to retain emails for a period of only thirty days.

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Need the Nuts and Bolts?

Now that you've had a chance to read about the use of electronic discovery technology, you probably want more information about the nuts and bolts of how to put it to work in your practice. For an overview of the use of electronic discovery technology in litigation or antitrust document review, contact us at OrangePages@applieddiscovery.com. Indicate which practice area best fits your needs, and complimentary materials will be sent to you shortly.

GUEST ARTICLE

A Litigator's Perspective on E-Discovery

by Peter A. Antonucci

Times have changed. Our clients used to store documents in filing cabinets and manila folders. Now, most documents relevant to litigation are found on hard drives, servers and backup tapes. In fact, 60% of business-critical information is now stored within corporate email systems, up from 33% in 1999. With this change in the way our clients conduct business comes a necessary change in the way litigators prepare our cases.

Outdated Discovery Practices

Over the past few years, many attorneys have adopted the practice of electronic discovery. But not long ago, many of us still conducted discovery the "old fashioned" way—in paper. Even as clients changed to computer-based business practices, many lawyers initially resisted applying technology to discovery practice, instead opting to print computer documents for manual review—resorting to the comfortable environs of litigation of the 1980s.

Any seasoned litigator is all too familiar with the manual process of discovery, especially document review and production. Once, months spent in a warehouse reviewing millions of pages of paper were viewed as a badge of honor. Unfortunately, this rite of passage was unpleasant for every lawyer involved, and often consumed months while critical case strategies depended on an analysis of what was contained in the documents. The success of a manual process for reviewing, sorting, marking and redacting privileged information also depended in large part on the concentration and subjective decisions of people who suffered from fatigue in these unpleasant working conditions. Moreover, most of the lawyers who undertook the process of reviewing documents—often in a client's warehouse or the sub-basement level storage facility of a law firm—were the most junior and inexperienced lawyers in the firm.

The Benefits of E-Discovery

E-discovery technology is a much better option in many of today's cases. In any matter involving more than 1 gigabyte of data, or more than 100,000 pages of documentation, lawyers should consider e-discovery processes.

The benefits of e-discovery are many. Attorneys can quickly search and organize documents by issues, witnesses and trial themes. A document may be categorized in one place or many places, with no need for multiple copies.

Web-based e-discovery technology also facilitates coordination and communication among firm offices, thus creating a seamless national litigation practice. This also allows a firm to better serve clients in cities where the firm has no physical office. The traditional notion of hundreds of

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THE APPLIED DISCOVERY DIFFERENCE

Quality | Capacity | Service

The hallmarks of Applied Discovery's commitment to client satisfaction are demonstrated on a daily basis in many different ways. To read more about the Applied Discovery Difference, log on to www.applieddiscovery.com/betterway.

Applied Discovery's commitment to client service has been recognized for the second consecutive year by the Washington Software Alliance. Applied Discovery has been selected as just one of three finalists for the "Service Provider of the Year" award for 2003. This honor is awarded to:

"... the company that regularly exceeds client expectations, demonstrating the most exemplary service through a strong use of technology to bring extraordinary quality, creativity and responsiveness to clients."

The award recipient will be announced later this month.

Getting Real Value from your E-Discovery Provider

Dear Miranda,

Some electronic discovery service providers seem to be more expensive than others. I've seen bidding wars in some projects recently. Can you shed some light on the different pricing options out there these days?

D. Murphy
Washington, D.C.

Dear Ms. Murphy,

The issue of pricing for electronic discovery can be a confusing and somewhat sensitive subject, particularly when you have a cost-conscious client that may not fully understand electronic discovery services. There are really two issues here that you and your clients should think about: 1) the cost of electronic discovery services compared to alternative methods of document review and 2) the complete list of services included in per-page or per-gigabyte charges from various service providers.

Costs Compared to Other Methods of Review

While many attorneys now have some electronic discovery experience, most law firm clients are still unfamiliar with the difference between outmoded methods of document review and true electronic discovery technology.

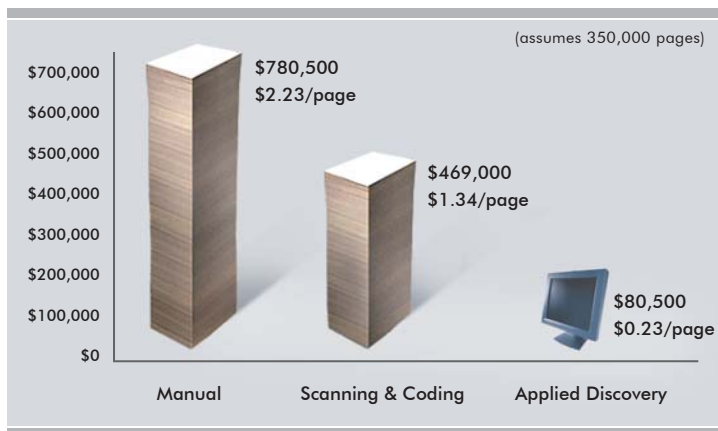
Prior to the development of true electronic discovery technology, lawyers had two options for reviewing clients' documents for production: manual paper review, or review of scanned and coded images stored in a desktop litigation support database. In fact, many people still think of electronic discovery in terms of the litigation support databases they have worked with in the past. These applications require investment in software seat licenses, extensive training, and sometimes the purchase of additional hardware. The law firm houses the data, and its IT staff provides support. This infrastructure adds up to a significant investment. Volume-based costs of printing and copying pages from clients' computers, then scanning and coding the documents for upload to the database are additional expenditures.

True electronic discovery services are different: pricing is volume-based, on a per-page or per-gigabyte basis. There is no up-front technical investment. You don't need to purchase additional hardware—each member of the review team needs only a web-connected PC to review documents online. You do not buy any software. Per-page costs include all training and support, preserving the resources of your firm's IT department. Training time is mini-

mal—usually less than an hour—for anyone who is familiar with use of the Internet.

True electronic discovery is strictly volume-based. The cost of electronic discovery services for your case relates directly to the volume of documents. This means that the benefits of e-discovery technology are scalable for different sized projects.

Cost is an important component of quality, but the up-front project bid shouldn't be your only consideration when choosing an electronic discovery service provider. Low-ball bids have a way of coming back to haunt you, with unexpected add-on charges, missed deadlines, and unmet expectations. In many cases, low cost also means low value.



One important component of understanding pricing for electronic discovery is the comparison of costs for alternative methods of document review.

Services Included in Volume-Based Pricing

Without an "apples to apples" comparison of the services offered by electronic discovery service providers, it is difficult to prepare a cost comparison of the different

array of possibilities for managing the data as the case progresses. Without this advance information, the review team frequently ends up paying more than originally estimated.

Assessing Value: 10 Questions to Ask

The answers to these questions will help you evaluate electronic discovery service providers. Each "no" will likely result in additional back-end costs.

1. Is pre-project planning included?
2. Are files processed in standard PDF format?
3. Is unlimited training for authorized users included?
4. Is the use of the Online Review application unlimited?
5. Is the number of users unlimited?
6. Is unlimited support by a dedicated Account Manager included?
7. Is your data stored on a dedicated server (i.e. not shared with other clients)?
8. Does the service provider use a secure server environment with redundant, managed firewalls and 128-bit SSL encryption with digital certificates?
9. Are software maintenance and upgrades included?
10. Is project management included for life of the case?

electronic discovery options. Most attorneys want to see an uncomplicated checklist or comparison chart, but an understanding of up-front pricing differences and long-term project costs requires more thought.

With careful planning and a good dialogue with your service provider, there should be no surprises and your legal team will benefit from the most desirable result of all—the best products and services at a competitive price—real value. ■

PRACTICE TIPS

Relief from Five Common E-Discovery Myths

Myth #1: Electronic discovery is too difficult and too complicated.

Electronic discovery is easier than paper. With just an Internet connection, lawyers can review, annotate, categorize, redact, number, and mark documents—all from one interface.

Myth #2: Electronic discovery is too expensive.

Electronic discovery is typically 80 to 90 percent less expensive than the alternatives.

Keeping documents electronic eliminates costs of handling paper: printing, shipping, copying, Bates stamping, storing, scanning and coding. Web-based review eliminates hardware, software, and IT costs of housing data within a firm, as well as expenses of traveling to the documents. Precise, targeted search capabilities streamline attorney review.

Myth #3: Electronic discovery is only for big cases.

Most lawyers first use e-discovery in a big case, but the technology scales down as well. Volume-based pricing makes the efficiencies of e-discovery available in any case—and saving unnecessary expenses is as important with a limited litigation budget as in major litigation.

Myth #4: Meta data is dangerous.

Guarding against inadvertent disclosure or alteration of meta data is not complicated from a technological perspective. The key is awareness of proper processes and a format suited for production.

Meta data enables detailed, precise search and ordering of electronic information. In finding and organizing evidence, meta data is an attorney's best ally. Whatever meta data reveals, the advantage is in finding it quickly.

Myth #5: The way to control e-discovery costs is to hire the lowest bidder.

The quality of service in the industry varies widely. Some "e-discovery experts" are paper litigation support companies attempting to adapt. With courts holding parties accountable for their dealings with service providers, choosing by price alone is not a sound alternative. Be sure you are dealing with a proven, experienced technology company. ■

SPOTLIGHT

Applied Discovery's Client Solutions Group Expands to East Coast

This issue's Spotlight features an interview with Steve Faherty, an Account Manager with the Client Solutions Group in Applied Discovery's Washington, D.C. office. The Client Solutions Group is made up of Account Managers who are former practicing attorneys, paralegals, litigation support professionals and IT managers. Each of Applied Discovery's clients has a dedicated Account Manager who maintains responsibility for every project related to that client, ensuring one consistent point of contact for client training and support.

The Orange Pages (TOP): Steve, you recently joined Applied Discovery's Washington, D.C. office as an Account Manager in the Client Solutions Group. Welcome to the company.

Steve Faherty (SF): Thank you—glad to be here.

TOP: We understand you formerly practiced with the Washington, D.C. office of Howrey Simon Arnold & White. Tell us a little about your work there.

SF: I was in the Antitrust practice group at Howrey for four years. My work there included antitrust litigation and managing second request document productions in multi-billion dollar mergers. Prior to working at Howrey, I did similar work at other D.C. area firms as a contract attorney.

TOP: What made you decide to pursue a career in the electronic discovery industry?

SF: When I first started working on second requests in the mid-1990s, the split between paper documents and electronic documents was about 70/30, with most of the information coming to the firm in paper form. Today those numbers are reversed; in most second requests about 70% of the information involved is in electronic format. As these changes were taking place, it became clear that antitrust practice would have to shift to keep up. As electronic discovery technology developed in the late 1990s, I saw how valuable these services would be in large document productions in both the litigation and second request context.

The idea of working with other attorneys to help them to streamline and improve their electronic document review practices appealed to me.

TOP: So what brought you to Applied Discovery?

SF: I worked with Applied Discovery as a client on a very large merger. As the attorney responsible for managing that document production, I did some comparison-shopping, and priced out the various electronic discovery review options.



Stephen Faherty and company provide client training and support.

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E-DISCOVERY RESOURCES

Applied Discovery's website contains a wealth of information related to the law and practice of electronic discovery. The following White Papers and articles are an example of the content available online. Please contact us for a complimentary copy, or view them in our online Law Library at www.applieddiscovery.com. The Law Library is updated monthly.

- **White Paper: Planning an Effective Electronic Discovery Response**
An overview of the state of electronic discovery law, with an outline for preparing an effective discovery response plan.
- **White Paper: Federal Courts Go Electronic and Mandate PDF for E-Filing: the Case Management/Electronic Case Files Project**
A summary of the current state of the federal courts' electronic filing initiative.

Options for Storing and Accessing Data

Understanding the differences in security measures among document review options is an important part of establishing an e-discovery plan. Three commonly employed options for storing and accessing electronic data in discovery are housing data locally, accessing data through a Terminal Services environment, or utilizing the Internet to access data in a web-based repository. Each of these options has distinct characteristics that require careful consideration in formulating your e-discovery strategy.

Housing Data Locally

There is only one way to truly secure a computer: to connect it to nothing. Once you connect a PC to something else—anything else—there is some amount of risk involved. This risk is generally considered an acceptable cost of the convenience and business advantages of connecting computers to networks, servers, or the Internet.

When people talk about housing e-discovery documents locally—in a law firm or corporate legal department—it is generally understood that the database where the documents are stored will be networked in some way to allow multiple users access to the same set of information. And while some lawyers think this is the safest possible place for their clients' documents—stored within the walls of the law firm itself—many fail to realize the security risks inherent with this approach.

Studies show that the occurrence of internal hacking is far more common than external hacking. Roughly 80% of hacking incidents come from within a business entity, with just 20% from an external source. With internal firewalls almost unheard of in law firm environments, the risk of unauthorized—or even unintentional—dissemination of information within the firm is greatly increased.

Another problem with housing data locally is the level security in a typical law firm or corporate environment. For example, certain security measures must be relaxed in order facilitate uninterrupted communications between law firm offices in different geographic locations or between law firms and their clients. The systems and settings that enable effortless transmission of desired information can also put confidential data at risk.

If data is housed locally at a firm or corporation, some part of the IT staff must be dedicated to managing security measures. Besides increasing overhead expenses, this means that the firm must invest in costly hardware and software to ensure that the latest security upgrades are in place—an expensive undertaking for even one case.

Terminal Services Environment

Terminal Services is a multi-session environment that provides remote computers access to Windows-based programs running on the server. Microsoft developed Terminal Services as a configurable service to enable delivery of Windows 2000 desktop applications to diverse desktop platforms. Microsoft concedes, however, that the multi-user nature of Terminal Services "tends to expose flaws and shortcuts" in many applications.¹



Roughly 80% of hacking incidents come from within a business entity, with just 20% from an external source.

The Terminal Services environment works well for one physical location (LAN - Local Area Network), but if the system is intended for use in multiple geographic locations (WAN - Wide Area Network), there will be significant problems accessing the data. With this method, there should be concerns about the number of users supported by the infrastructure. For example, an application running a robust back-end database like SQL server will have serious degradation after about 10 users. Sessions can crash easily and connections can "hang" in the process because the system thinks a greater number of users are connected. A Terminal Services environment also presents significant performance problems when documents must be printed.

Unfortunately, a Terminal Services environment also presents some security concerns. Because Terminal Services treats all users as if they are logged on locally, it's difficult to control access to the system while making documents available to all necessary users. Difficulties also arise with setting permissions, controlling account settings, and configuring and tracking other options that allow remote users access to do their work without jeopardizing system security. Regular monitoring of these issues must be carried out to ensure that security is not compromised.

Web-Based Access

The information security measures in place with any web-based document repository should include at least 128-bit SSL encryption with digital certificates, redundant managed firewalls, and advanced intrusion detection systems. Physical security is also critical. Servers housing

client data should be stored at a secured co-location facility with physical security measures requiring biometric authorization (commonly a hand print or a retina scan) for access. The facility should have strict environmental controls in place and should protect the servers from damage during natural disasters.

The information security or "virtual security" measures in place for data stored this way are far superior to security measures in local data housing environments or Terminal Services environments. While some people who are unfamiliar with advanced information security protocols suggest that information accessed via the Internet is unsecured and is susceptible to easy interception, nothing could be further from the truth. 128-bit SSL encryption has never been broken. In fact, security experts estimate it would take a trillion-trillion years to crack using today's technology.

The physical security measures involved in this setup are also critical. At a co-location facility, physical barriers like building infrastructure are designed exclusively for the purpose of protecting sensitive information. No single law firm or corporation could replicate the advanced security measures in place in this environment without dedicating extraordinary time and resources to the effort.

While most people have grown comfortable with the protection of Internet security protocols for personal purposes such as banking and online shopping, many lawyers have received misinformation about these protocols as they relate to e-discovery services. Asking the right questions of any e-discovery service provider is critical. With a good understanding of the information security and physical security measures in place, you will be in the best position to select the service that is right for you.

Further Reading

To read more about advanced Internet security for e-discovery, please contact us at OrangePages@applieddiscovery.com to request a copy of "Applied Discovery Security and Infrastructure," our Fact Sheet which explains state-of-the-art physical security and information security in detail.

¹ Microsoft white paper "Optimizing Applications for Windows 2000 Terminal Services and Windows NT Server 4.0, Terminal Server Edition," available at www.microsoft.com. ■

This issue's Tech Tips column was written by Mark Stokes, Executive Director of Information Technology at Applied Discovery. If you have a technical issue you'd like to see addressed in this column or you would like to request a copy of the materials referenced above, please contact us at OrangePages@applieddiscovery.com. ■

FEATURE (continued from Page 1)

a body of law specifically related to electronic discovery," adds Withers. "Several years ago, electronic discovery was treated just like paper discovery. Now, the courts acknowledge that the logistics, scope, and cost of electronic discovery will necessarily be different than paper discovery." These issues are made more complex by the volume of electronic information stored by litigants as compared to the volume of paper information historically involved in most cases, and by parties' data retention and backup practices.

One of the first federal judges to tackle the issue of discovery of backup tapes, Magistrate Judge John M. Facciola of the U.S.D.C., District of Columbia, authored the now famous *McPeck v. Ashcroft*¹ decision. In *McPeck*, the defendants argued that the cost of restoring and searching email messages from backup tapes outweighed the likelihood that any relevant information would be found. In setting forth a "marginal utility" analysis for determining which party should pay the costs of searching archived data for relevant evidence, Judge Facciola noted that times had changed since early electronic discovery decisions were authored in the mid-1990s. Rather than categorizing electronic discovery expenses as a "cost of doing business in the computer age," as some early rulings had done, Judge Facciola's decision acknowledged that there really is no alternative to computerized document creation and storage in today's business world.

"Electronic discovery is not going away," affirms Judge Facciola, "but I am constantly surprised by how little effort there is by members of the bar to revise how they approach discovery in an all-electronic world." Although he hasn't had any electronic discovery disputes in his court since *McPeck*, Judge Facciola recognizes that nearly all cases now involve some component of electronic data discovery. "As server capacity grows there will be more and more electronic data stored every day, but lawyers should not be intimidated and overwhelmed by electronic discovery," notes Judge Facciola. "We lawyers have conquered technology before."

Judge Facciola offers some advice for practitioners faced with conquering a new kind of discovery in the computer age. "The first deposition you take in any case should be the system administrator of your opponent," he advises. "You should consult your electronic discovery expert in advance, and know what you need to ask at the deposition." He warns lawyers against heading into electronic discovery unprepared, particularly when representing the producing party. "Haphazard handling of electronic records can be very dangerous. It may look like you are hiding something if you are not organized and prepared."

Withers agrees with Judge Facciola's words of caution, and echoes the sentiment. "The federal courts do not want any electronic discovery surprises. Counsel should meet and confer early and often." Mandatory disclosure rules are designed to encourage open communications about potentially discoverable materials, including all forms of electronic data. "Email is just the tip of the iceberg," says Withers. "There are many other places electronic documents can come from."

Lawyers practicing in federal courts have had to adjust their discovery strategies to accommodate these changes. Electronic discovery preparedness begins even before a case is filed, according to Alan Blakley, Chair of the Federal Litigation Section of the Federal Bar Association. "Lawyers must talk with their clients about electronic discovery issues before they face litigation," advises Blakley. "It is important to include the clients' IT staff in these discussions so they know their legal duties and they know their role if a document request is received." While internal IT resources must be

"Any lawyer who goes before a federal judge without understanding their client's technological capabilities and infrastructure is asking for trouble."

- Ken Withers, Attorney & Research Associate at the Federal Judicial Center

advised of their role in electronic discovery, Blakley notes that seeking expert e-discovery assistance even before a case is filed is frequently a good idea. "A company's own IT department is not always in the best position to make decisions about how to handle data that may be discoverable in litigation. Outside assistance is sometimes required to assess the situation." Federal judges agree with this approach. "Any lawyer who goes before a federal judge without understanding their client's technological capabilities and infrastructure is asking for trouble," states Withers. "The WalMart and Dell² cases are illustrative of this fact."

Electronic discovery technology plays an important role in the changing practice of discovery in federal courts. "Once lawyers figure out what they're doing and begin cooperating on these issues, electronic discovery is going to be so much easier than paper discovery ever was," says Blakley. "Why would you want to look through 200 pages to find the one sentence you're interested in when you can search the documents and find it in a few minutes?"

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CASE LAW UPDATES

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In any event, [the defendant] already has sought to collect emails from those persons who were involved in the plaintiff's termination, and has produced those that exist."

The plaintiff requested a ruling that, if the defendants could not produce the evidence, they would be precluded from raising the documents in evidence, and that the jury would be instructed regarding the missing evidence.

The magistrate found this request premature. If the defendant eventually sought to introduce evidence of the contents of emails it had destroyed, then the issue would be ripe for the trial court. The magistrate pointed out that the plaintiff had not exhausted all avenues of seeking the emails: it could ask for the names of persons from whom the defendant had sought the emails, and suggest the names of other potential sources who might have saved copies of relevant emails.

Court limits deposition on claims adjusting software

York v. Hartford Underwriters Insurance Co., 2002 U.S. Dist. LEXIS 21458 (N.D. Ok. Nov. 4, 2002).

In this case alleging bad faith in processing of an insurance claim, the plaintiff noted a 30(b)(6) deposition on the subject of the defendant's use of a claims adjusting software program, "Colossus." The defendant insurance company opposed this request, contending that it called for confidential, proprietary business information subject to copyright and non-disclosure agreements.

The court held that the program itself was not proprietary or confidential because it was widely used in the industry, and the plaintiff was able to learn about it via the Internet. The nature and extent of the defendant's use of "Colossus," however, might be confidential and entitled to protection from third parties. The court invited the defendant to present a proposed protective order directed to that concern. Finally, the court held that the plaintiff was entitled to discover data stored in "Colossus" that was particular to her claim.

For full summaries of the cases noted above and a complete listing of cases related to the law of electronic discovery, visit our online Law Library at www.applieddiscovery.com. Our Law Library is updated monthly, and also features court rules summaries, white papers, articles and other educational materials related to electronic discovery. ■

GUEST ARTICLE (continued from Page 2)

documents needing a physical "home" at the situs of the courthouse has become an outdated vestige of yesteryear.

E-discovery technology also provides cost savings in a number of different ways. For example, per-page costs for electronic processes are significantly lower than for manual processes, and travel and long-term lodging expenses associated with large-scale onsite document review are eliminated altogether.

An e-discovery database provides instant access to critical documents from any location with an Internet connection. Regardless of where you are—in another city for a deposition or motion, or working from home on a weekend—there is no longer a need to carry boxes of documents with you. Tools for collaboration are an important component of e-discovery technology. The ability to share annotations and lawyer notes on documents promotes greater efficiencies in strategizing between the client and the legal team.

Tips for Selecting an E-Discovery Provider

Your e-discovery strategy is only as good as the service provider supporting your efforts. In selecting a provider, you should

consider the following: experience, capabilities, service, and cost.

Experience matter—be sure to ask for references and confirm the company's reputation with other litigators. The company's capabilities must meet your needs. For example, if you have an email-intensive case, be certain the provider can handle the email format in question. The quality of services available today varies widely, so don't be afraid to ask for a detailed description of capacity, turnaround times, and review system functionality. And all the technology in the world won't help you if you don't have a professional, reliable account manager assigned to your case. Don't be satisfied with a "call center" service model—expect professional support from one consistent point of contact. Finally, be sure to ask clear questions about cost. You and your client will benefit from accurate cost estimates if you have a good idea of the type and amount of data at issue in your case.

The success of any e-discovery project depends on gaining support for implementing technology early in the review process. This backing must come from the most senior partner involved in the case, and will

ideally include enthusiastic support, if not downright insistence, from the client as well. When the entire team has a vested interest in the success of the e-discovery project, all are more likely to enjoy all the benefits the technology has to offer.



Peter A. Antonucci is Of Counsel in the Litigation Department at the New York office of Weil, Gotshal & Manges LLP. Mr. Antonucci concentrates his practice in complex commercial litigation, products liability, toxic torts, bankruptcy litigation, crisis management and internal corporate investigations. ■

SPOTLIGHT (continued from Page 3)

Based on my research, Applied Discovery was the clear choice. Their technology had a huge impact on our ability to quickly review and produce information.

TOP: Tell us about the expansion of the Client Solutions Group to the East Coast.

SF: The Client Solutions Group provides training, service and support to all Applied Discovery clients. Historically, that assistance has been provided from the company's headquarters office in Seattle. As the company expanded and opened offices in New York City and Washington, D.C., it made sense to expand the Client Solutions Group as well.

TOP: What does this mean for the company's clients?

SF: It means they will have an Account Manager in the same time zone. I work closely with clients in the Washington, D.C. area, and am also available to assist the other Account Managers with their clients in New York and other East Coast cities.

TOP: What kinds of services do you offer to Washington, D.C.-area clients?

SF: The top priorities are providing in-person training and project support. In some cases, particularly large second request projects, we train more than a hundred users on our Online Review system. Although the training sessions last only an hour, the sheer volume of people to be trained requires quite a time commitment. Then there are routine matters that come up along the way. For example, clients frequently ask for assistance in formulating a plan to "divide and conquer" when the data set is particularly large. When the review team faces more than 1 million pages of information—a common occurrence in today's cases—they benefit from advice from people who have been there before

TOP: If a firm were interested in the kind of service you've described or general questions, how should they ask for help?

SF: They can contact their local Client Development Representative—all the names and numbers are listed on our website. Or contact me directly at stephen.faherty@applieddiscovery.com.

TOP: Thanks for the information Steve. Welcome to the company, and good luck. ■

FEATURE (continued from Page 6)

Withers agrees. "It is nonsense to try to put electronic documents into the paper process today," he says. "The electronic discovery industry has developed to meet these needs, and is maturing quickly."

For attorneys who have been waiting to put electronic discovery to work in their cases, the time to do so is now. Federal court practice demands that lawyers understand and embrace this emerging area of law. While the courts are demanding these changes, the long-term beneficiaries will be the forward-thinking law firms and corporations who will benefit from a more efficient and effective legal system.

¹ *McPeck v. Ashcroft*, 202 F.R.D. 31 (D.D.C. 2001).

² *GTFM, Inc. v. Wal-Mart Stores*, 2000 Westlaw 1693615 (S.D.N.Y.) (sanctions imposed for costs unnecessarily imposed on plaintiff by defendant's failure to disclose computer capabilities); *Tulip Computers International v. Dell Computer Corp.*, 2002 U.S. Dist. LEXIS 7792 (D. Del.) (court ordered email discovery after party's failures to cooperate with computer-based discovery). ■

UPCOMING EVENTS

Applied Discovery will be participating in the following events in the coming months. Please contact us to register or to request more information. For information about other electronic discovery events, visit the News & Events section of our website at www.applieddiscovery.com.

Western Pennsylvania ACCA Meeting
Pittsburgh, PA
April 7, 2003

American Bar Association Section of Litigation
Annual Conference
Houston, TX
April 9-12, 2003

Daily Journal / LegalWorks
2003 Conference & Exhibition
April 22-23, 2003
Hilton, San Francisco

BNA Litigation Forum
Electronic Discovery & Document Retention
New York City
May 2003

IN THIS ISSUE: SPECIAL LITIGATION FOCUS

- **Read what judges are saying about electronic discovery in federal courts. See Page 1.**
- **Get a litigator's perspective on electronic discovery from Peter A. Antonucci. See Page 2**

APPLIED DISCOVERY IN THE NEWS

You may have read about Applied Discovery recently in the following publications. Please contact us at OrangePages@applieddiscovery.com to request a copy of any these articles.

"Distinguishing Between EDD Vendors"
Law Technology News
February, 2003

"Taking the Mystery Out of Electronic Discovery"
New York Law Journal
January 27, 2003

"Five Common Myths About Electronic Discovery"
Digital Discovery & e-Evidence Newsletter
December 2002

"Electronic Discovery Surpasses Paper Filings in M&A Regulatory Reviews"
Mergers & Acquisitions Magazine
November 2002

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