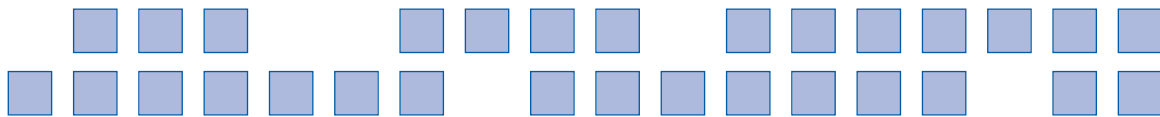




Evolving

Skill Sets

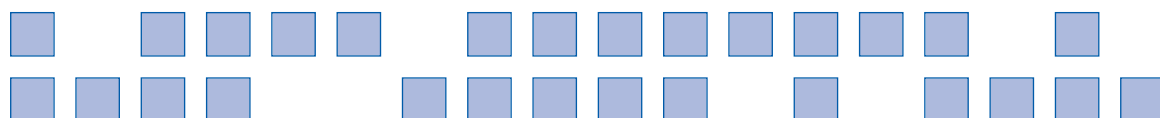


BY MIKE DOLAN AND JOHN THICKETT

The future of legal document review will involve new technologies and processes that rely on savvy reviewers.

The roles of legal administrators and litigation teams are changing significantly. To get the best results for clients, today's administrators have to be experts at combining the best review technology, people, and processes in a coordinated and structured, yet flexible, manner. The results of discovery and review – as measured by smoking-gun document identification, productivity, and quality – will continue to improve as legal administrators and litigation teams continue to drive their evolution.

The increase in documents for review, the growing functionality and complexity of document review software, and the rise of highly focused international document review companies means that those involved with discovery and review must be current on industry best practices. Knowing how to run a modern, efficient review has huge implications for a client's matter in terms of the outcome of and the costs to get to trial.



Given the rapid evolution of technologies and **best process practices**, it makes sense for law firms to engage specialists who know how to “knit” the components together. Companies specializing in **document review** have experience bringing the various components together for **optimum results**.

Once a case is moving forward, the success of a review is not guaranteed just by the use of the best components. Given the rapid evolution of technologies and best process practices, it makes sense for law firms to engage specialists who know how to “knit” the components together. Companies specializing in document review have experience bringing the various components together for optimum results.

DOCUMENT REVIEW TODAY

New technology is supposed to improve the way we do things and increase productivity and results. This usually means doing things differently than before, with success ultimately depending on users’ abilities to adapt.

Document review tools and practices are changing rapidly, with the evolution of LexisNexis and Westlaw representing a major step toward streamlining a centuries-old process using technology. Law firms immediately realized the savings in both labor and time and the need for a new skill set. Researchers adapted and no longer tread through the stacks; instead, they now log on to a computer and search for relevant case information.

In the past 20 years, all levels of the legal industry have evolved with technology. The game changed significantly for reviewers when the Federal Rules of Civil Procedure were implemented in late 2006. Although electronically stored information was prevalent, the new guidelines forced direct evaluation and created an explosion in the corpus of discovery. From a legal and operational standpoint, the change accelerated a paradigm shift in the ways organizations approached litigation, due diligence, and regulatory investigations.

Years ago, the process for large-scale document review was straightforward. Every attorney and paralegal available would be briefed on the review, and then hundreds of boxes would be split among the team members, and page after page would be reviewed.

Electronic discovery has easily driven the number of documents into the equivalent of tens of thousands of boxes.

KPMG estimates that document review encompasses 58 to 90 percent of total litigation expenses. As cost reduction continues to be a major focus for law firms and clients of all sizes, reviewers are bombarded with new software programs that are designed to expedite results. The ability of skilled reviewers to grow with new technologies and changing processes will greatly impact their abilities to provide superior results and remain competitive in a changing marketplace.

EVOLVING TECHNOLOGY

In the past few years, electronic document discovery has opened the door for new technologies to speed the review process through mountains of data. For example, search tools have added capabilities to reduce document populations based on key words. However, their complexity has necessitated new skills and processes. Search tools such as dtSearch now include a complex array of tools, including fuzzy, phonic, wildcard, stemming, and thesaurus search options. An expert using sampling to test complex searches can greatly reduce the document population with a reasonable assurance that a significant number of relevant documents are not being eliminated. However, untrained personnel and poorly conceived processes

may produce far too many – or more importantly, far too few – relevant documents.

More document review repositories are marketing their abilities to group documents by conceptual relevance. Attenex is one example of an early leader in this space. Document review productivity can more than double when documents are grouped by concept rather than a traditional review by a Bates Number. For example, all drafts of a contract may be grouped together regardless of the custodian or from which file the document was collected.

New review tools are reaching higher levels of sophistication and are developed with algorithms designed for specific types of cases or for different results. Much of the new skills in document review are focused on choosing the right tools for the job and using them to capacity. Reviewers are leading the development of these new tools by outlining needed enhancements.

FOCUS ON PROCESS

Document review technology continues to grow as electronically stored information increases exponentially. In turn, savvy legal professionals are developing processes to maximize the capabilities of new software and staff. Often, reviewers are consulted in the meet-and-confer process to help limit the quantity of documents, build review strategy and conduct pilot tests on sub-sets at the beginning of discovery. This upfront work streamlines the pending review to save time and reduce expenses.

The challenges of this brave new world of document review are being met by an emerging group of document review organizations. Best-in-class operations are applying processes such as SPC (statistical process control) and DMAICS (define,

measure, analyze, improve, control, and sustain) to continuously improve productivity and quality. Using these tools, document review organizations are not only able to help a client accurately forecast the budget and time of a review, but are able to decrease the cost while improving the review's quality and the legal team's confidence.



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Technology and process advancements ultimately rely on reviewers and their abilities to add new skills, change techniques, and grow with the technology.

PEOPLE MATTER MOST

Technology and process will continue to evolve, but skilled reviewers make the real difference. After Enron's bankruptcy in late 2001, federal prosecutors embarked on possibly the largest document review project ever undertaken to build their case of accounting fraud and deceit. Perhaps one of the largest discoveries was the shell companies (and the code words that referred to them) that the company officers had created in order to hide debt. Unusually named after Star Wars characters, like Jedi or Chewco, these terms could have easily been missed by a team that was on autopilot.

The Enron review succeeded in large part due to the skills of the people conducting the review and their collective ability to look beyond standard keywords. The newest technologies are useless without reviewers who are able to be trained and certified to use the new tools, maximize the results, and employ higher level, information-deciphering skill sets. Technology and process advancements ultimately rely on reviewers and their abilities to add new skills, change techniques, and grow with the technology.

Similar to predictions in the 1980s of the "lights out factory," any prediction that automated programs will replace outstanding reviewers is misguided. However, document review technology will evolve with a reduction of staff time, shorter review periods, and an increase in through-put with the refinement of processes, including off-shoring for first-level review. The quality of a review will continue to improve as the leaders in the field continue to push its evolution. *

about the authors



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Mike Dolan and **John Thickett** are the Chief Executive Officer and Chief Financial Officer/Chief Marketing Officer, respectively, of Tusker Group, which was founded in 2002 to specialize exclusively in advanced legal document review options to in-house and outside legal counsel. Headquartered in Austin, Texas, Tusker Group is continuously looking for new ways to reduce variation, refine processes, and measure results to help customers realize the full benefits of outsourced document review. For more information, visit www.TuskerGroup.com.

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