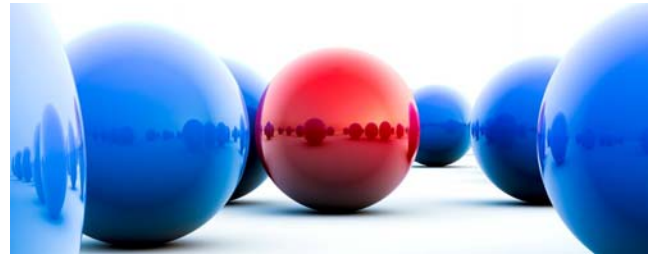


Thoughts on the Webinar:
“Making the Case for Early Case Assessment”

- By Adam Rubinger



In this webinar, we were once again fortunate to hear the opinions of well respected leaders in the e-Discovery space: US Magistrate Judge David Waxse, Dennis Browne - Associate General Counsel from Capitol One, Stephanie Weirick - Attorney at Arnold and Porter LLP participating, along with myself Adam Rubinger, Managing Director at TechLaw Solutions as moderator. Many issues were discussed around the area of Early Case Assessment (ECA) and I wanted to take some time to revisit some of the issues and add some thoughts.

One of the recurring themes in the webinar was an attorneys need to be better prepared for litigation and most specifically, e-Discovery. As Judge Waxse pointed out on numerous occasions, participants in litigation must become more proactive in not only preparing for meet and confers, but also to better communicate with one another. When parties to litigation invest the necessary time it takes to discuss and agree upon issues prior to the onset of discovery, they will be in a much better position to

Participants in litigation must become more proactive...to better communicate with one another

effectively engage in the discovery process. Issues such as the form of production, keywords and culling strategies, and collection/preservation plans are paramount to successful cooperation of the parties. It is no longer acceptable or beneficial for parties to continue to be overly adversarial when dealing with the issues of e-Discovery. Judge Waxse further pointed out that while discussing and defending potential

discovery expenditures is very reasonable, doing so by speculation and without credible facts about potential costs, just claiming they will be excessive, is ill advised.

We discussed in some detail the application of search and cull strategies along with the use of technology to help reduce data sets, and how to use technology to get an early view into the data. Tools that allow litigators to quickly analyze data and allow them to use search functionality, meta-data restrictive filtering, and document review capabilities are all necessary pieces of functionality that can help the case team get a better understanding of what the data tells them about specific issues relevant to the case. By taking sample data sets and ingesting them into these tools, the case team can become far more knowledgeable about the issues in the case and will be better prepared to argue issues early on in the matter.

We also discussed how ECA can be used as a mechanism for reducing data volumes. By utilizing technology to quickly assemble data and enable the case team to use tools such as concept search, domain exclusions, date range filtering, and custodian-based sampling, the case team can quickly reduce the data set that will ultimately move to linear review. Judge Waxse gave very good advice when dealing with the issue of keywords and utilizing technology for data reduction purposes and that was to get both parties to agree ahead of time. Both Stephanie Weirick and Dennis Browne brought their experiences in working with technology to help reduce data sets to the table and agreed that working

with opposing counsel early on can avoid challenges later, especially when it comes to complex issues such as keyword culling.

On the issue of search terms, we discussed concept or smart search technologies. All our experts agreed that if used properly and agreement with opposing counsel is obtained early in the matter, these types of technologies can not only help reduce data quantities, but can also ensure greater defensibility.

Sampling strategies were also identified as highly valuable, but to be effectively implemented it is considered a good practice to involve experts in determining an appropriate scope. By utilizing technologies that can help ensure that the most relevant set of data is produced to opposing counsel, litigators will be able to fulfill their obligation to ensure all relevant documents are produced. As Judge Waxse noted, as long as the approach is reasonable, the courts will generally accept that approach. All of the panelists continued to reiterate that cooperation between the parties is an absolute must for the e-Discovery process to run smoothly.

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ECA is a wonderful methodology that supported by appropriate tools can help the case team learn more about their case earlier in the process, as well as provide significant data reduction strategies. In my consulting practice, I advise clients on a daily basis to consider an early assessment as an approach to help reduce costs and become better prepared.

It was my privilege to be a part of this discussion with Judge David Waxse, Stephanie Weirick and Dennis Browne and I look forward to speaking with them again soon.

To listen to the webinar on-demand go to:

http://westlegaledcenter.com/program_guide/course_detail.jsf?courseId=19776074

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