



Organizing Large-Scale Document Review Projects

By James L. Crane

The explosion of digital data in the last decade has forced legal practitioners to reconsider what constitutes a “big” case. The daunting task of collecting and reviewing a million pages seemed to test the boundaries of technology and manpower 10 years ago. Now, one million page document reviews are commonplace, and the largest cases encompass tens of millions of electronic documents. Recently, federal district courts have certified class actions with as many as 1.6 million potential class members. Given the likelihood of a massive and complex data population, it has become impossible to manage a document review project without technology.

The amendments to the Federal Rules of Civil Procedure have placed even greater pressure on legal practitioners engaged in electronic discovery. The ability to effectively manage projects involving large document populations has become a necessity for practically every corporate law department, as well as for the firms that provide legal services to them. Consequently, law firms and corporations continually struggle to implement the best blend of personnel and technologies to support comprehensive, consistent management of their large-scale document review projects.

Some projects use in-house attorneys exclusively, while others farm out all review work to trusted firms or contract attorneys hired by the firm or staffing agencies. Additionally, most projects involve a variety of technological tools. Some of these are adopted off-the-shelf, while others are provided by a litigation support vendor. No matter which of these different approaches you ultimately embrace, there are three critical issues you should consider when planning a large-scale document review. Proactive attention to these simple points will help you ensure efficiency, reduce costly errors and avoid missed deadlines.

Determine the Scope of the Work

Thorough, thoughtful planning is essential to prevent small, early mistakes from having a catastrophic impact later in the litigation lifecycle. One of the first planning steps is for the responsible attorneys to analyze and decipher the issues in the case and the scope of the discovery requests. This step will include careful preparation for the FRCP Rule 26(f) meet and confer requirements. Operational planning can begin only after the scope of discovery is thoroughly understood by all involved parties.

Set Accurate Timelines

Following the initial legal analysis, it is crucial to understand the logistical details of the project. Calculating, and sometimes negotiating, the discovery timeline with the parties and the court will shape subsequent preparatory decisions. Part of the calculation, and a good practice in preparing for the F.R.C.P. 26(f) meet and confer, is to evaluate the client’s “universe” of data. In this step, attorneys will work with IT professionals to identify the boundaries of the data universe and make determinations regarding which documents will be deemed “reasonably accessible” under F.R.C.P. 26(b)(2)(B). The balance of these documents will be evaluated for relevance and can be collected, searched, reviewed, and eventually produced accordingly. Once there is awareness and agreement regarding the accessibility of documents, project timelines can be set in accordance with the discovery and court requirements.

Staff Appropriately

The size of the data population and the time requirements will determine how many reviewers will be required. Staffing a project properly is crucial, and there are a few common mistakes that can easily be avoided. First, you must have realistic expectations regarding the rate of review. This factor is highly dependent upon case-specific parameters such as the complexity of the issues in the case as well as the type of documents being reviewed (two-page emails versus two-hundred-page spreadsheets). Additionally, the nature of the documents will have an impact on the rate of review – materials from a custodian who possessed significant privileged communications will require more time and consideration. Each of these aspects must be assessed and adjusted throughout the life of the review. Next, the reviewing attorneys’ experience level and perspective will dictate both the rate and the accuracy of the review. Staff attorneys who are familiar with the subject matter and who have successfully completed previous review projects will need less supervision and will generally work faster. Inexperienced contract attorneys will require closer supervision and will likely work more slowly.

Additionally, you must carefully gauge your expectations with regard to the rate of review, and weigh the importance of speed against the requirement of accuracy. Neither should be sacrificed for the sake of the other; your timelines and assumptions should be geared, as much as possible, toward a balance between the two.

Finally, for larger projects that require dozens of contract attorneys from staffing agencies, it is a good idea to hire 10% more attorneys than you need to compensate for attrition and incompetence. Prior to beginning the review, you should develop a training program to educate the group regarding the relevant legal issues, decision protocol, and the review technology being used. This step will help reduce attrition and retain your core knowledge base for the duration of the project.

Create a Hierarchy of Decision Making

Consensus has famously been defined as “the absence of leadership.” In a large-scale document review, there will often be a lack of consensus, but there must never be an absence of leadership. A decision-making hierarchy must be explicitly defined and established at the inception of the project. In large projects, there are usually a number of layers in the decision-making hierarchy. At the top of the decision pyramid are the responsible attorneys in charge, typically from outside counsel and the client’s legal department. The next layer is usually staff attorneys provided by the outside counsel law firm. A majority of the decisions will be made by the staff attorneys, as they will have the most direct contact with the

reviewing attorneys. Within the review attorney team, there must be additional layers of decision-making – at a minimum, these should include the first review, second review, and quality control teams. This hierarchy must be clearly delineated and publicized so that everyone involved is able to respond and communicate effectively.

Choose Technology Wisely

Recent advances in technology have made the organization and review of large-scale projects more orderly and efficient. Litigators must now face the daunting task of fully understanding the wide array of available tools, their benefits, and their requirements, and making selections that suit the parameters of each particular project.

Without a doubt, large data populations should be maintained in a centralized database repository, preferably hosted by a reputable and reliable third-party. The once unwieldy and intimidating volume of data becomes easily searched, reviewed, and managed in perpetuity with the right combination of database and review tools. Furthermore, secure repositories are efficient and affordable; compared to other methods, centralized databases can greatly reduce the project's cost in both time and money. A few companies specialize in hosting documents for legal review and can host in a native format and “repurpose” previously reviewed documents for future use by a client. These capabilities will dramatically reduce the cost associated with data processing and review time.

In order to be truly effective, the repository must be augmented with a review application that is suitable for the challenges of a large-scale review. Such a platform must integrate seamlessly with the centralized repository, and must provide core capabilities such as customized searches and simple tools to exclude irrelevant material from review assignments. Additionally, the review platform should streamline the production process to ensure that deliverables are complete, consistent and correct. As decision makers consider all of the available options, there are a few helpful criteria to remember. One, use tools that are robust and scalable, in case the project grows in unexpected ways. Two, partner with a litigation support provider that has a solid reputation and extensive experience with large-scale projects. Three, do not settle on the first option you consider or make a decision based solely on familiarity or comfort levels. There have been many significant advancements in hosting and review technologies. Ask for recommendations from peers, and look for reviews in industry journals and on the web. Then be sure to test-drive a variety of possible solutions before making a final selection.

Develop a Communication Protocol

In large-scale actions, even the most meticulous planning can be undermined by poor communication. A thoughtful and practical communication protocol must be developed prior to the beginning of the review. Once the review is underway, all reviewers must be continually monitored and provided with regular feedback. Also, as decision makers introduce new material or revise previous directions, there must be 100% dissemination of critical information to everyone involved. For the most part, a successful communication protocol can be created using available technologies.

In the past, communication methods at the review site included public whiteboards, memos, and frequent team meetings. There were many problems with these low-tech communication methods. Sometimes attorneys were not present and missed important instructions. In other cases, printed information wasn't circulated to everyone. And of course, verbal instructions were often misheard or misunderstood.

Recently, legal review technologies have incorporated many practical communication solutions that can be integrated into a larger communication protocol.

Much of the time, review attorneys' access to the internet and standard e-mail platforms is strictly limited. This protects client confidentiality and limits outside access to sensitive information. However, it also limits communication. In response, some of the leading review platforms have incorporated internal messaging systems that include both e-mail and instant messaging. The e-mail system can be used to distribute information to as many or as few users as needed, based on assignments or levels of authority. The instant messaging allows for easy, seamless, and instant collaboration between attorneys reviewing similar material. These technological tools resolve many of the issues that used to hamper communication; furthermore, all communication is documented and can be archived for future reference.

Develop a Workflow Protocol

Technological innovations are slowly replacing the old methods of assigning and distributing review tasks in large-scale projects. For the last decade, managing attorneys have tracked review assignments and completion using printed lists and ranges of document ID numbers. These methods were prone to mistakes, made tracking progress difficult, and wasted valuable time. It was a clumsy way to assign and control workflow, but it was familiar and it was generally the best a manager could do with the tools that were available.

Now, with advancements in review software technology, workflow can be generated, assigned, monitored, and verified flawlessly. A few leading review platforms provide supervising attorneys with the ability to divide large populations of data in any number of ways. They can then create and assign to-do lists to individual attorneys based on a variety of criteria, such as level of experience, relevant issues, custodian name, date ranges, and so on. Additionally, this next generation of review platforms allows supervising attorneys to monitor progress in real-time with user friendly “dashboards” that display up-to-the-minute review statistics. Finally, these applications provide powerful quality control tools that can be used to prevent inconsistent use of tags, and to validate responsive and privilege calls prior to production. The best-of-breed review platforms give supervising attorneys an unprecedented degree of flexibility in designing a custom workflow that generates assignments, monitors progress, and automates much of the quality control process.

Large-scale document reviews can seem overwhelming at times; however, technology has done a great deal to make some of the most daunting aspects of these projects easier to manage. Continued integration of technological innovations, along with proper training, strong leadership and appropriate use of human resources will increasingly ensure that litigants conserve their clients' time and money while delivering the highest quality work product.

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