In late 2013, Jon Palmer, Assistant General Counsel at Microsoft, wrote a blog post about the burden preservation, collection, filtering and review place on organizations today. His statistics about the average Microsoft case are startling — 59 million pages preserved and ultimately 88 pages used. That’s one millionth of one percent. Even if you focus just on what’s produced, which is arguably the data set that you are required to get to, you’re still only talking about 0.15% of the preserved documents. I won’t rehash the article here, but it’s a great read and I encourage you to check it out. But two sentences in particular really stood out:

“All the time and resources spent preserving, collecting, reviewing, analyzing and producing might be worth it if we ended up using all this data, but we don’t. Instead, we get haystacks upon haystacks of information and very few needles.”

What’s really going on?

The Funnel is Inefficient

The activities in the middle of the eDiscovery funnel — collection and processing, review, and production — carry significant cost. According to research performed by the Rand Corporation, 96 percent of the costs incurred during these phases are for external resources (26 percent for vendors and 70 percent for outside counsel). According to Microsoft’s data, 97 percent of the documents that are collected and processed never move on to review. And while a much larger percentage of documents that are reviewed are produced — 25 percent — given the extremely high cost of review (it consumes 73 cents of every discovery dollar, according to the Rand survey), it isn’t nearly large enough.

We can look at each of these phases in the funnel in detail to identify inefficiencies and find opportunities to automate. That will certainly uncover ways to improve the process, but the results will be incremental — the problem is too big to look for ways to just make a dent. To make a significant and impactful difference, we need to completely transform the process.

A lawsuit contains a series of decision points. The faster you can identify and understand relevant information, the faster you can get the strategic insights you need to determine how to proceed. Here are four examples of technology-based changes that can unlock the power of data and transform the discovery process.

1. Defining Objectives

Determining what constitutes a favorable outcome and establishing the appropriate objectives are critical for your organization. Identifying as much relevant information as quickly and efficiently as possible informs strategy development. The strengths and weaknesses of that relevant information need to be understood and defined in order to provide leverage for negotiation. You want to ensure that your discovery technology delivers the power of rapid, effective decision support.

2. Successful Negotiation

Negotiating with a leverage advantage tends to lead to favorable outcomes. Leverage is a situational advantage; information provides power and information disclosure has the potential to increase or decrease one’s power. Gaining a situational advantage during investigation requires obtaining as much relevant information as possible prior to formal discovery. Technology that provides the ability to rapidly target the information that matters puts your organization in a position of power.
3. Planning, Budget, and Resource Allocation

When your investigation leads you to formal discovery you will want to prioritize information and costs effectively. Using substantive facts identified during the investigation, you may choose to organize additional information sent out to ensure the right people are looking at the right things and that non-relevant items are excluded. For example, sending the trial team the key information you’ve identified enables them to begin building the story and guides the discovery team as they seek to identify additional items of interest during their review. Technology that tracks your steps and automates the ongoing classification of your information is critical to collaborating and minimizing unknowns.

4. Repurposing Data across Cases

The only thing worse than having to collect and process over 10 million pages to produce 87,500 in one case is collecting and processing those same documents over and over again across multiple matters. An eDiscovery repository enables organizations to leverage single-instance storage and work from previous cases, including data, classifications, and workflows. The system becomes more intelligent over time to improve the speed of decisions and limit business disruption. For organizations that routinely deal with similar cases or investigations, this can not only increase efficiency and lower costs, it can also improve consistency across matters.

The Health of the Business is at Stake

For many organizations, eDiscovery is simply a reality of business and the goal isn’t to eliminate it. The key is to determine the decision points of the case and understand how information can be used to better support them. Microsoft has spent $600 million in outside services over the past decade. That’s $600 million that could not be invested in R&D, sales and marketing, customer support, and other core areas of the business. That figure doesn’t even include the opportunity costs of the internal resources consumed in the management of the process — and that’s just one company. Add this up across the board and that’s a tremendous amount of time, money and effort spent without creating any value whatsoever. When looking for needles in a world of growing haystacks, look to leverage technology and workflows that can get you to the information you need at a time it can be used to support effective decisions.

End notes

1 Rand: Pace, Nicholas; Zakaras, Laura, Where the money goes: Understanding litigant expenditures for producing electronic discovery, (April 2012)