

DATA IS BETTER THAN DOCUMENTS

The bad news is that as computers and the Internet generate more and more data and “documents”, the cost of finding, managing, and exchanging that data (in a legal dispute) has gone through the roof. Common wisdom says that discovery on a large case can now be more than 50% of the overall cost of the case. This is, in large part, because technology has made it so easy to publish so much information so quickly to so many people. And this drives up the cost of discovery.

The good news is that, for the first time ever, technology might just solve the problem that technology created. But not in the way you expect. Not by making documents cheaper to deal with, but by creating new data sources that are starting to make documents less relevant.

This is because data tends to be more objective than the documents human beings write and the testimony human beings provide.

“Was the individual’s iPhone in Peoria, Illinois on Thursday, July 5, 2018 at 3:15 p.m.?”

“YES.”

“Did that iPhone make a call at 3:18:21 p.m. to a freight company in a call lasting 24 minutes and 13 seconds?”

“YES.”

Data is less ambiguous than human thoughts converted to human language written in human words. It's more clear. It is not subjective so you don't have to read it and interpret it. This means that all sorts of work—the stuff that causes discovery to be expensive (i.e., document review)—can be substantially reduced if not eliminated.

Our ability to use computers to analyze data means that it’s inevitable that we will return to a time in which discovery can have more predictable costs and a more predictable effort; you will be talking about months, or even weeks, instead of years.

Yes, you read that right. Weeks.

To those of you who doubt this, I’d remind you that many lawyers doubted that anything could ever replace a physical library of law books, and now attorneys

relying solely on such a library find it nearly impossible to compete with attorneys who have a subscription to an online legal library.

When discovery becomes more manageable, and once again might have a predictable cost, my hope is that lawyers can revert back to charging for value instead of charging for time.

Imagine This... You have a matter with a potential exposure of \$25 million. We can handle that matter faster and better than anyone else through smarter discovery, better case insights, and a better shot at resolution or summary judgment - and a lot less document review, depositions, and motions practice.

In return, we will charge a fee that is commensurate with the value you place on our ability to perform in this manner.

Not This... we will bill you \$XXX dollars per hour for as long as this case persists.

Technology has certainly caused a lot of problems in litigation. It is refreshing that technology might finally provide a solution.

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