

E-Discovery: Merrill's Past, Present & Future

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Agenda

- The E-Discovery Platform at Merrill Lynch
- Envisioning the Landscape
- Getting Organized
- Process, Roles and Duties
- Dealing With Silos
- Legal Practice vs. Costs and Process
- What's At Stake Now and What Will Be At Stake in the Future?
- "Do-Overs" – What We Would If We Could
- Next Steps and Conclusion

Merrill Lynch E-Discovery Platform

- **Current Structure**
 - Discovery & Regulatory Response Team (DARRT) – 3 centralized teams in NYC, 30 people
 - Intake - Data entry into MDM system for all matters
 - Discovery Analysts
 - Email, Legal Hold and E-Discovery
 - Legal Operations Support – 3 centralized teams in Jacksonville, FL (lower cost venue), 36 people
 - LOS Team - DARRT “back office” for key data and document collection activity
 - Third Party Processing
 - LRS – Email archive retrieval, hard drive and share drive retrieval
 - First Pass Review Team (build-out in progress – 5 attorneys)
 - OGC Business Management Team – 2 people
 - Project management and implementation support



Envisioning the Landscape

- **Began scoping ML E-Discovery model in early 2006**
- **Key Questions**
 - **What does “E-Discovery” mean for us?**
 - Identification, retrieval, processing, review and production of ESI for legal, regulatory and governmental proceedings
 - **What constitutes ESI, where does it reside and who “owns” it within our organization?**

• Email	Digital Art and Photographs
• Attachments	Video Files
• Memoranda and reports	Databases
• Spreadsheets	Audio Files
• Templates	Presentations
• Deal Books	SMS and MMS



Envisioning the Landscape

- **What are the “unique” aspects of ESI?**
 - Sheer volume
 - Easily copied and mass distributed
 - Metadata concerns
 - Disparate, unlinked repositories spread across the globe
 - No common, enterprise-wide ownership or knowledge of systems and repositories where ESI resides
 - Stored on many media formats (PCs, laptops, PDAs, thumb drives, CDs, external media, etc.)
- **Is all ESI important? If not, where and how do you draw the line?**
 - General business information
 - Business records
 - Regulated business records

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Envisioning the Landscape

- **Principal Objectives**
 - **Risk Reduction**
 - Defendable, transparent and repeatable process
 - Accurate, complete, and timely productions
 - **Cost Effectiveness and Cost Efficiency**
 - Drive low value activity to lowest cost providers
 - Understand the “physiology” of legal discovery expense
 - Identify technologies that can reduce cost
 - Determine what activities to in-source to gain both savings and efficiency

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Envisioning the Landscape

Challenges

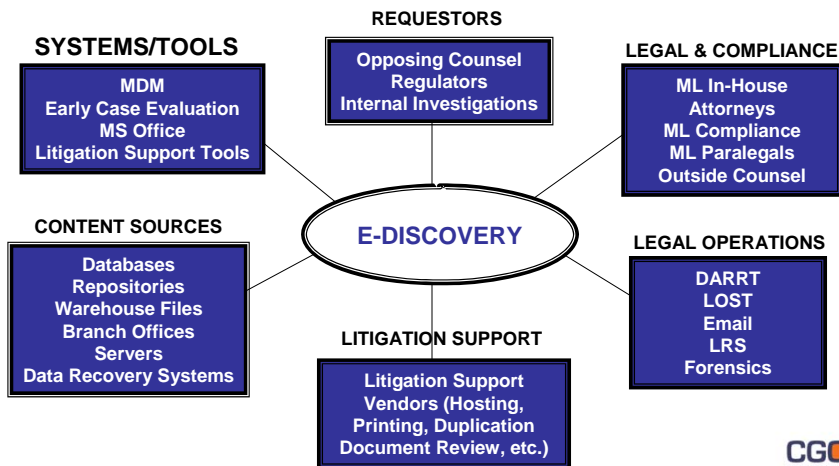
- No data for metrics analysis
- Little automation
- No common legal hold policy
- Insufficient technology
- Reliance on outside counsel
- Separate “silos” own policy for Electronic Communication, Global Records Management and Electronic Discovery
- Incomplete document/data repository inventories



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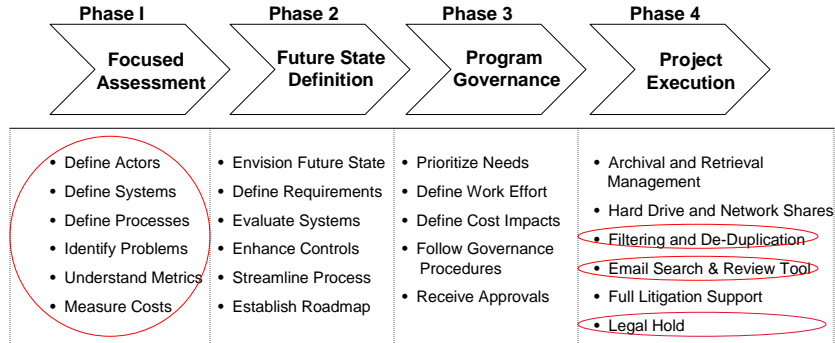
Getting Organized

January 2006 - Constituency Model



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Getting Organized



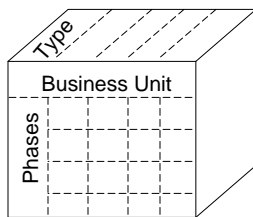
“Dual Objective” Strategy

- Initial focused assessment of end-to-end e-discovery process
- Immediate tactical focus on urgent requirements:
 - Email Search & Review Tools
 - Email Filtering & De-Duplication Tools
 - Legal Hold Process and Tools



Getting Organized

Scoping the Focus



Goals

- What is the right way to think about e-Discovery – by phase, type, business unit?
- What should the scope be for the initial focused assessment and overall E-Discovery enhancements?
- How do we organize the team to support this scope?

Business Unit	Type		
	Litigation & Arbitration	Regulatory	Employment Law
GMI			
GPC			
MLIM			
Research			
Emp. Law / LTM			

Business Unit	Phases of e-Discovery				
	Collection		Discovery Management		
	Identification	Retrieval	Processing	Review	Production
GMI					
GPC					
MLIM					
Research					
Empl Law / LTM					

Type	Phases of e-Discovery				
	Collection		Discovery Management		
	Identification	Retrieval	Processing	Review	Production
Litigation & Arbitration					
Regulatory					
Employment Law					



Process, Roles and Duties

Discovery Lifecycle							
Collection				Discovery Management			
Identification		Retrieval		Processing	Review	Production	
Litigation	Regulatory	Litigation	Regulatory				
BU							
BU							
BU							
BU							
BU							

- Stream 1**
- 1) Document current collection processes for each business unit/area
 - 2) Document & prioritize sources of collection for each area (i.e. databases, hard drives, network shares, systems, etc.)
 - 3) Implement process maintenance procedures
 - 4) Identify problems / issues with current process
 - 5) Identify and produce appropriate metrics
 - 6) Implement metrics maintenance procedures
 - 7) Define options for enhancements

- Stream 2**
- 1) Document current litigation support processes
 - 2) Establish contract and SLA with vendor
 - 3) Identify problems / issues with the current process
 - 4) Determine options for litigation support (in-house, external service, etc.)
 - 5) Analyze pro's/con's for each option, including alternate vendors and in-house tools
 - 6) Drive decision on litigation support model
 - 7) Define options for process enhancements / automation



Process, Roles and Duties

Role	Role Description	Project Responsibilities
Sponsor	Primary ML advocate for EDI.	Articulate overall EDI goals to EDI team members and to ML business units. Serve as final arbiter of issues and decisions. Responsible for obtaining funding.
Steering Committee	Representatives of various ML components of e-Discovery. Serve as governance structure for e-Discovery issues and projects. Communicates e-Discovery risk and impact to Firm management.	Support Sponsor in clarifying and prioritization of individual projects and assist in supporting funding requests.
Functional Owner/ED Lead	Responsible for implementation of Steering Committee approved e-Discovery projects. Overall e-Discovery process owner. Single point of contact for all e-Discovery ML components and processes.	Responsible for communicating issues and funding needs to Steering Committee. Insure that e-Discovery processes are clearly defined, owned, tested or validated and integrated into ML as part of overall EDI goals. Develop written e-Discovery policy
Program Manager	Insure that program follows recognized project methodology. Provide transparency into project for all team members and leadership. Work with Sponsor, Business Units and Finance to obtain funding and monitor financial spend rate.	Communicate project and issue status. Establish program governance model. Insure communications plan is in place and followed. Insure deliverables clearly articulated and owned. Insure appropriate timelines exist and are met. Insure funding needs defined and governance followed. Insure KM structure exists and is followed.
ML Attorneys	Serve as representatives of ultimate "consumers" of e-Discovery processes. Subject matter experts on legal requirements for discovery in their respective areas. Review and approve e-Discovery policies. Responsible for identification process in cooperation with Legal Operations.	Provide legal requirements and standards for e-Discovery processes. Review and accept e-Discovery process deliverables (e.g. data delivered, tools provided). Review and approve e-Discovery policy for ML.
Business Unit Representatives	Ultimate "owners" of data and documents subject to e-Discovery. E-Discovery costs are generally allocated to business units. May assist in the identification and retrieval processes.	Responsible for approving funding. Serve as representatives of respective business units for EDI issues. Serve as advocates for e-Discovery to respective business units. Review and accept e-Discovery process deliverables for identification and retrieval.



Process, Roles and Duties

Role	Role Description	Project Responsibilities
Electronic Discovery Subject Matter Experts	To provide subject matter expertise on processes and technology necessary for EDI.	Provide best practices for e-Discovery processes. Identify and assist in evaluation of tools and vendors. Assist in defining e-Discovery strategy and roadmap. Identify risks in processes or tools as currently exist or as proposed. Assist in documenting processes and procedures.
Legal Operations Owners (LOST, DARRT, LRS and other OGC Ops)	Owners of identification and retrieval processes and operations for OGC. Responsible for execution of retrieval. Subject matter experts on data/document sources and formats.	Provide metrics on cost, frequency and effort associated with different data and document types. Will provide resources for evaluation of tools and vendors. May be responsible for execution of data/document processing and for providing tools and resources for review and production. Responsible for documenting and maintaining ML e-Discovery processes.
Outside Counsel (may include internal OGC attorneys who "represent" outside counsel e-Discovery needs)	To serve as subject matter expert on: (1) law of e-Discovery, (2) needs of outside counsel for e-discovery (e.g. as secondary "consumer" of e-Discovery processes).	(1) Advise on legal requirements for e-Discovery processes and tools. Identify existing and potential legal risks associated with e-Discovery. (2) Advise on needs of outside counsel for e-Discovery deliverables (e.g., format, technical support, expertise for affidavits, depositions, etc.).
ML Sourcing	To negotiate and formalize relationships with litigation support vendors and tool providers.	Assist in development of RFPs and negotiation terms and pricing of contracts and schedules. Responsible for execution of final contracts and schedules.

Dealing With Silos

- **Many organizations not structured to effectively manage ESI retrieval on an enterprise-wide basis**
- **Essential to link E-Discovery with Records Retention**
- **Without synergies in interest/objectives across groups owning data or systems, process development can grind to a halt**
- **Need to create shared purpose to overcome territorial boundaries**
- **Establishment of inclusive project management structure imperative at the outset**

Legal Practice vs. Cost and Process

- **Cost management as part of in-house counsel's job**
 - Understanding "The Lawyer as Artist"
 - Rationalizing "urgency"
 - Process as a productivity enhancer and cost reducer
- **Imperative of a legal hold process/use of Atlas as omnibus system**
- **Understanding when to pay and when not to pay if only 20% of work impacts outcomes**

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"Do-Overs" – What We Would If We Could

- **Elevate priority data/system mapping completion**
- **Insure Records Management at the table from the start**
- **Be more aggressive about technology requirements**
- **Be more conservative about implementation timeframes**
- **Insure buy-in, budget support from business and technology leadership**
- **Plan for more dedicated resources**

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What's At Stake: Now and the Future

- **Now**
 - Increasingly sophisticated opposing counsel and regulators
 - Ability to keep up with crushing volumes
 - Budget-busting costs
 - Liability for non-compliance
- **Future**
 - Increasing digitization across all media
 - Possibility cases could turn on technology and discovery capability
 - Amassing mountains of “toxic waste”

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Next Steps and Conclusion

- **Integrating with Records Management**
- **Retention policy review**
- **Connecting Legal Hold, Collection and Disposition processes**
- **Building Internal First Pass Review capability**
- **Dealing with issues of scale and resourcing**

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