

2012

Second Annual Litigation Support Models and Structures Report

Advisory Services & Market Research



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Evolution in the Marketplace



The latter half of 2012 saw the beginning of an evolution in the eDiscovery and litigation support space. Spurred on by a number of considerations such as increasing ESI data volumes, the rapid advancement of technology, growing corporate control of eDiscovery processes, and the maturing competitiveness in the vendor market, law firms are reconsidering how they are delivering litigation technology services. At an executive level, firms are strategically asking themselves, "do we want to be in the business of litigation support and eDiscovery services?" and, "what is the business purpose of this department?"

Law firms are increasingly evaluating their litigation support departments from a business perspective, asking themselves questions such as:

- Should litigation support be a profit center or a service center?
- How does this function increase profits per partner for our firm?
- How can we provide the cost predictability/cost savings clients are demanding?
- How can we remain competitive in this space compared to other law firms and service providers?
- What is our current and future investment appetite?
- How do we achieve consistent and predictable output from a process with widely variable inputs?

While the triggers and the questions are common across the AmLaw 200, the decisions firms are making are surprisingly varied. Rather than following in lockstep with their peers, executive boards, managing partners, directors of litigation technology, and eDiscovery counsel are coming up with creative solutions for these functions that fit their firm culture, client profile, litigation profile, and outlook on how eDiscovery best fits into the business of law.

Methodology

The Cowen Group gathered its primary research for this report during our Leadership Breakfasts, held from October 2012 through November 2012. The round table discussions held in six major markets throughout the United States brought together executives and other professionals from the AmLaw 200 and major corporations to discuss the current models and structures used in their organizations or by outside counsel. Data was also gathered through a mini-series held by TCG Events' New New Leaders group. In addition, we conducted one-on-one interviews with managers, directors, and eDiscovery counsel at 30 of the AmLaw 100 firms. Finally, 76 firms responded to our 2012 Salary and Market Landscape Survey, sharing information on the structure, economics, and investments of their departments.

Landscape of Service Delivery Models



In our round table discussions and interviews, we asked how firms are currently providing eDiscovery and litigation support services. We determined three most common categories of service delivery models—insourcing models, traditional outsourcing models, and managed services/hybrid models. However, our in-depth conversations showed us that each firm approaches each model slightly differently. For instance, one firm who recently invested in a managed services partnership is looking to outsource the infrastructure, hardware, review/processing software, and processing services with one all-in-one provider, while another firm outsources the storage of review databases to one organization and has yet another company install servers within the firm's data centers to handle the processing of discovery data. Likewise, we saw firms take a variety of approaches to an insourcing model. Several firms have established large internal teams, own their own software platforms, and are still supported in an infrastructure capacity by third parties (infrastructure as a service). A few firms are going all in—making heavy investments in hardware, software, services, and people throughout many phases of the EDRM, while more often firms are espousing a hybrid or utility player model selectively choosing which aspects of the EDRM to insource. These decisions are made based on which capabilities and capacities allow the firms to either provide excellent service to their clients, generate revenue for their departments and shareholders, or both. Most firms make the decision to insource/outsource by a capacity- or amount-threshold of data/cases or by specific function (e.g. collection, processing, review hosting), but some more global firms also make this decision geographically. Finally, few firms who follow a traditional outsourcing model relinquish all of their eDiscovery work; they most often host data on internal platforms under a certain GB-threshold or retain project management/case consulting services internally.

Insourcing Model

- Is your firm a heavy investor?
- Is your firm a utility player?

Insourcing Through IaaS

- Do you need support with hardware or infrastructure?
- Do you need support with software?
- Do you need support with services?
- Do you need support with overflow talent?

Traditional Outsourcing Model

- Does the firm have the capability to provide services in-house?
- What's the threshold to determine whether to insource or outsource?
- Does your firm use preferred providers rather than engage them on a case-by-case basis?

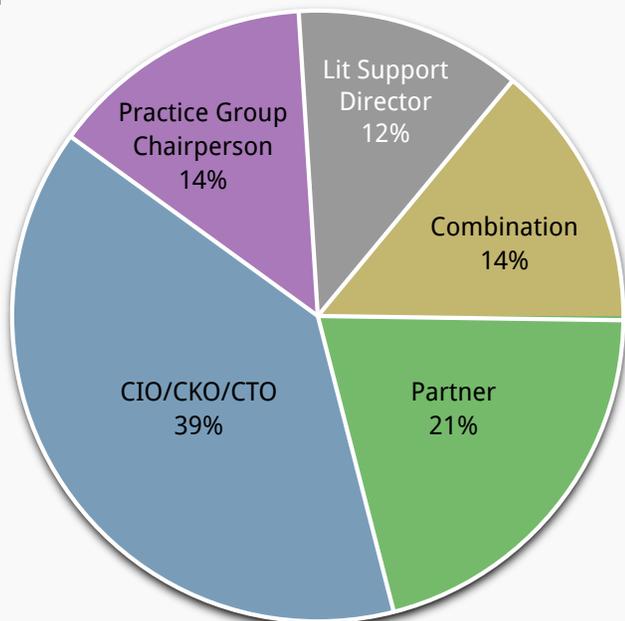
AmLaw 200 firms still diverge on department structures and critical financial questions.

In addition to the various approaches for providing eDiscovery services, we still see a split in the structure of litigation support departments throughout the AmLaw firms to which we spoke (although the choices are normalizing between two or three best available options). Of the firms responding to our 2012 Salary and Market Landscape Survey, 44% said litigation support reports up through the CIO, while 33% of departments report up to an attorney or committee of attorneys. Almost 80% of firms have a specifically assigned manager or director leading their internal group, while the rest split leadership of this department among attorneys and C-level executives. Despite some of the press in 2012, most firms litigation support and eDiscovery teams remain internal departments to the organization. Only two firms we spoke with have formed subsidiaries to provide eDiscovery services, and another two are treated as separate businesses, although they are not officially separate entities.

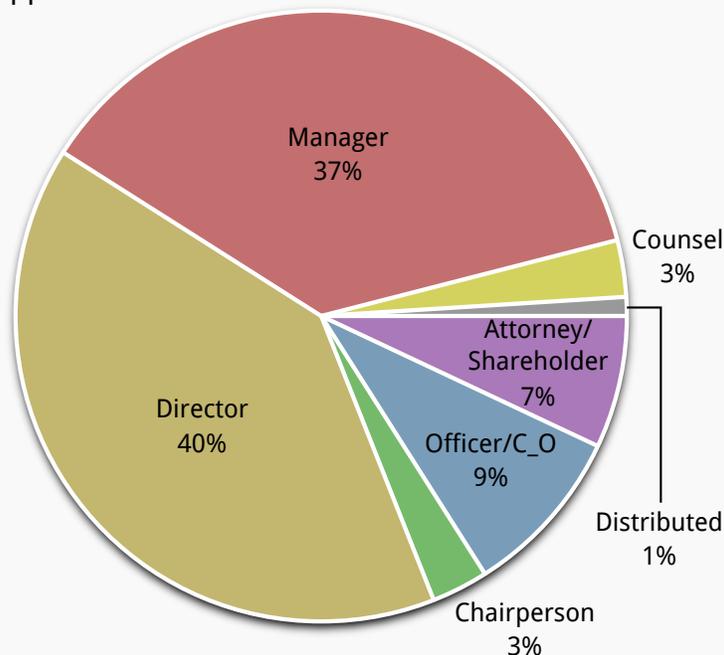
Landscape of Service Delivery Models



To what title do litigation support departments report?



What is the title of the person in charge of litigation support?



Likewise, firms also differ on the financial decisions involving their departments. Approximately 40% of departments identified themselves as profit centers, while 60% of firms expect litigation support to either break even or be a loss-leader.

Litigation Support Profitability

"At our firm, the litigation support department is:"

A profit center	40%	36	<div style="width: 40%;"></div>
Expected to break even	46%	41	<div style="width: 46%;"></div>
A loss-leader	14%	13	<div style="width: 14%;"></div>
Answered Question		90	

Landscape of Service Delivery Models



Anecdotally, however, many firms which claim to be profitable are generating fairly low margins. Only a handful of firms we spoke with are showing significant profits, while still saving clients money, generating substantial margins in their organizations, and attracting repeat business. These department leaders have figured out how to address some of the most pressing financial questions that litigation support functions face:

- How do we reduce write offs that attorneys and clients make for eDiscovery services?
- How do we capture or manage more of the firm's eDiscovery matters for large litigation through internal channels?
- How do we incentivize case teams to work with internal litigation support resources rather than going solo to an outside vendor?

One national law firm director said it best: his balancing act is to generate profits that are robust enough (around 10%) to encourage firm leadership to continue investing money in the practice (people, process, and technology), incentivize partners who use the group's services to continue to utilize the internal team, yet still keep prices low enough to remain competitive and cost effective for clients.

Billing Litigation Support

"How often do attorneys at your firm mark-down or omit litigation support time and services from invoices?"

Regularly	35%	33	
Occasionally	55%	51	
Rarely	9%	8	
Never	1%	1	
Answered Question		93	

Landscape of Service Delivery Models



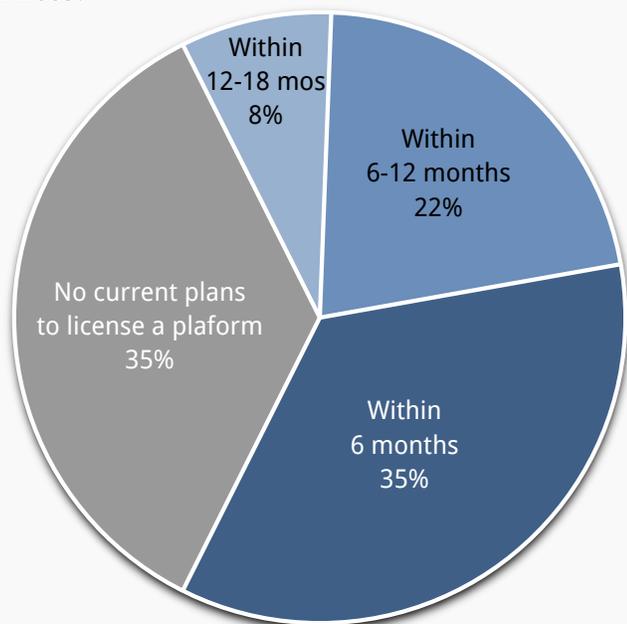
What do firms insource?

Of the thirty AmLaw firms with which we conducted one-on-one interviews, an anecdotal breakdown of planned investments for 2013 can be summarized as follows:

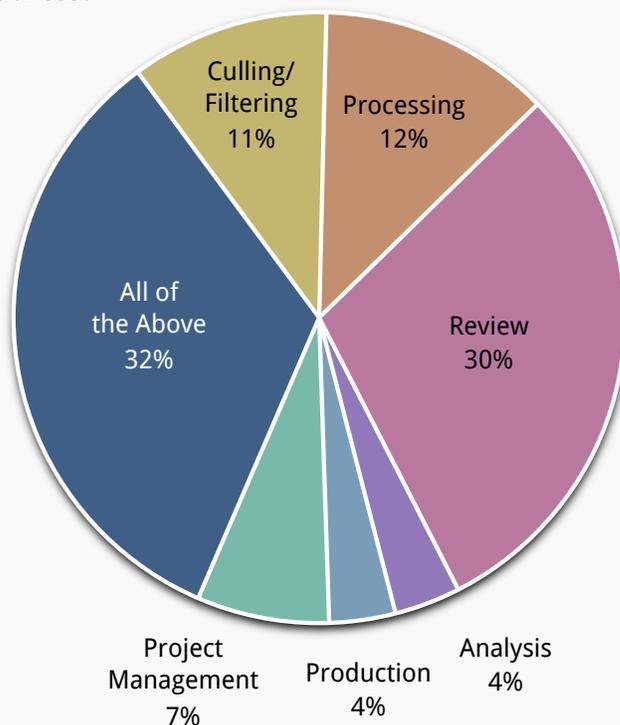
Investment in People, Process, Technology, and Partnerships



Do you expect your firm will directly license a new software platform to provide litigation support services?



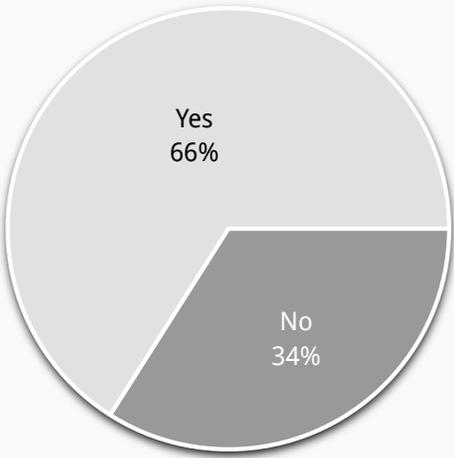
If your firm is investing in a new directly-licensed software platform, what aspect of the EDRM will it address?



Landscape of Service Delivery Models



Will your department add additional roles in 2013?



Roles to be added in 2013

Manager/Regional Manager	16%	9	
Coordinator	17%	10	
Specialist	24%	14	
Analyst	53%	31	
Consultant/Case Manager	9%	5	
Project Manager	38%	22	
Staff Attorney	14%	8	
Paralegal/Paratechnical	3%	2	
<hr/>			
Answered Question		58	



What do firms outsource? Why? How?

AmLaw 200 firms interested in investing in a managed services provider

Currently engaged in executing a managed services agreement with a third-party provider	10%	9	
Currently exploring options in engaging a managed services provider	16%	14	
Highly interested in learning more about how the firm can leverage this model	6%	5	
Moderately interested in learning more about how the firm can leverage this model	19%	17	
Not particularly interested in a managed services model	42%	37	
Keeps all data on their own servers and would never consider a managed services model	7%	6	
Answered Question		88	

The evolving landscape: what is changing?

Despite the diversity of eDiscovery solutions that firms are deploying, we saw a remarkable consistency in how organizational leadership is starting to think about these functions in a business sense. There is fairly wide consensus that the current evolution of law firm litigation support models is a product of firms going back to their roots. Department directors and executive leaders should always ask themselves, "what do we want to be when we grow up?" "do we have the capability and appetite to be in the business of technology," and "should litigation support drive a profit or is it just the cost of doing business?"

Organizations who are getting out of the game or relying more heavily on managed services partners note that technology is hard, tedious work. Due to commoditization and vendors capitalizing the market, maintaining competitive prices potentially may not be profitable for every firm. Some of the comments our research participants shared with us during the process are: for 2013 can be summarized as follows:

The business of the firm is giving legal advice and not processing data. We are investing in pieces that are more consistent with that business model (e.g. case consulting, project management, and ediscovery legalists).

You need highest level support from managing partner and executive committee in order to encourage adoption by case teams. Its not enough to be a supporter, the highest levels need to believe and understand the business purpose of these changes. These just aren't financial changes; there are many political changes that are very controversial for the firm.

Technology is harder to justify as a core business.

Landscape of Service Delivery Models



You need continuous investment in people, process, and technology to be successful and you need to generate revenue and profits per partner in order to justify expense.

Acting as national discovery counsel ties in very nicely between the firms business model and the litigation technology practice. We are specializing in the ediscovery space, just like other sub groups are specializing in other practice areas.

It is difficult to staff a litigation technology department in a law firm. Litigation support people have to accept a certain ceiling here; they can't become a partner as a data analyst. This ceiling doesn't actually exist at a vendor or service provider. On the other hand, firms who are investing heavily in their internal teams, agree a successful venture needs three ingredients: an appetite to invest, an entrepreneurial spirit, and flexibility to allow the group to remain competitive. These firms agree that the goal is not just to make money, but to provide the best service and make enough money to stay competitive and encourage the firm to continue investing in the best technology and people resources, as well as marketing efforts to continue to drive new business and build a viable practice. Still they all caution that this requires a lot of continuous effort and will not be a viable option for every organization. Some of the thoughts shared with us during the research process include:

- Nimbleness and flexibility are the ways to be successful in business.
- We need to be able to move quickly (e.g. with alternative firm pricing).
- We also can't go through three committees of management for every decision.

What Do Industry Thought Leaders Think?



From a client perspective, it is nearly impossible to know without deep investigation whether or not a firm has made a sufficient investments in people, process, and technology to handle a particular project. Senior partners are generally unreliable and uninformed on the subject. Typically, they have no understanding of what their firm can and can't do. Many default to representing that their firm can do anything and everything because, well, it is the firm at which they work and therefore, by definition, the best around. A few default to an almost visceral loathing of "IT" as the despised Other who is the enemy of all that is good and productive. Any inquiry beyond these surface feelings is usually futile. And whether they can get it done remains paramount. How—insourced, outsourced—matters very little to in-house counsel. Though "at what cost?" is absolutely an important consideration.

Casey Flaherty, Corporate Counsel at Kia Motors America

A business model for litigation support/technology has to adapt to firm economics. An understanding of business intelligence, structure of case teams, and overall practice management should be the drivers of figuring out what model fits in the organization. While profit per partner and revenue numbers speak volumes, the value add to the client is undeniable. As technology and science continues to be a major factor in cases, internal litigation support provides process management and direction that is agnostic of any outside interests, which would come first in an outsourced managed service.

Christopher A. Acosta, Director of Practice Support at Nossaman

The Cowen analysis is spot-on when I compare it to our current evaluation efforts. We are looking at the SaaS model to reduce internal investment in the robust infrastructure required to manage and maintain a state-of-the-art litigation support platform. We are seeking to add value to our firm by offering eDiscovery services to our clients and legal teams, which means experienced staff who can focus on advising the legal team and client regarding collection, processing, and analysis of electronic data. It also means state-of-the-art technology to manage client eDiscovery expense, and proven processes. We believe the SaaS model will allow us to focus on process-driven delivery of these services to our firm and clients.

Caroline Sweeney, Director of Practice Group Technology Services at Dorsey & Whitney

Litigation support departments in law firms are at a crossroads and it's a territory not unfamiliar to them. Most litigation support professionals have spent most if not all of their career carving their niche and value to the firm. People, process, and technology are three key ingredients to a departments success. The hardship for litigation support departments today and the future lies in staying competitive in each one of these areas. With people, it's becoming harder to stay competitive in salary and to keep existing staff and/or hiring additional staff. With process, most departments are not staffed deep enough to provide resources to develop and maintain best practices that are sorely needed and required to handle the type of insource processing demands. With Technology, this has evolved beyond the reach of traditional firm support. Once, this was a no-brainer for most IT s taffs to take on and handle "on the side"; however this now requires dedicated resources and significant hardware and software investments. So, from a business perspective how important is it to provide this service internally? Because to provide it, firm costs are going to increase significantly in all three areas and the opportunity to recover these costs will continue to decrease.

A challenge for Managed Service Providers is being able to develop and implement processes to accommodate today's electronic discovery demands for law firms. For instance, some of the reasoning law firms brought electronic discovery processing and technology internally was to be able to expedite processes that typically get bogged down using service providers. Law firms have grown to expect same day service from their in-house offerings. The mandate for managed service providers is to processes that can meet this same level of expectations.

Duane Lites, Director of Litigation Support at Jackson Walker

Nearly two decades ago, we recognized the importance of investing heavily in litigation support. Advances in technology and the predominance of ESI have only confirmed the wisdom of this decision. Providing cost-effective, high quality ediscovery services to our clients is key to success in litigation. Our clients want to know and be confident that our people, processes, and technology are reliable as well as cost-effective. Over time, we have learned that flexibility in service delivery models, coupled with repeatable best practices and an understanding of our clients' needs, allows us to provide the most cost-effective service delivery model in matters both large and small. There is no "one size fits all" but we are expected to be able to address our clients' needs of all sizes.

Rose J. Hunter Jones, King & Spalding

What We Learned



Many of the firms we spoke with are struggling with two common questions:

1. How do we build consensus within the firm for whichever model we deploy?
2. How do these changes impact my career and my staff?

Through our research efforts we came away with the following takeaways to help answer these questions:

The economic climate continued to turn around in 2012. Across the board, firms saw increases in ESI volume and number of cases involving eDiscovery. Latest generation technology is allowing firms to handle these increased caseloads without making significant investments in additional staff.

However, law firm hiring is up across the board as well, and firms have focused especially on two types of hires: technical resources that can support their new technology (experienced administrators and analysts) while learning project management skills, and higher margin consultant or advisor roles.

Instances of eDiscovery attorneys are also increasing, with many firms we spoke with referencing an eDiscovery practice group, or promoting a litigation associate into a specialized eDiscovery role for the firm.

Out of the firms we spoke with, the majority of firms still deploy a hybrid model, where they perform a portion of the services internally, and manage the rest through a traditional outsourcing model (either preferred provider or case by case).

Despite this commonality, most of these firms are in transition, considering some investment in people, process, technology, or partnership in the next year that will change their traditional status quo. Most often, firms are exploring either purchasing new technology or considering their options for outsourcing either infrastructure, software, services, or people under a subscription based managed service contract.

Most often the firms considering managed services are looking at an infrastructure as a service (IaaS) model or assistance managing, maintaining, and upgrading licensed technology. As an add-on to those services, firms are also exploring overflow support in some of the technical capacity, if ESI volume or workload exceeds internal capacity and capability. Most firms are looking to the same provider partner to package these services together.

The most common service that firms traditionally perform internally that they are looking to outsource is processing. Most firms also outsource some piece of collection (although many firms advise corporate clients on the collection and preservation of data), and trial services.

Firms who are exploring managed services options cite common triggers like delivering consistent outcomes using a process with inconsistent inputs, the increasing cost of technology and people resources, remaining competitive in the market space, the relationship between IT and Litigation Support in law firms (where firms are a peer or subordinate, and support or maintenance of litigation technology takes a back seat to email servers, firm-wide upgrades, or infrastructure projects), and the ability to reduce costs while still maintaining control of the process through using this type of model.

Those firms who aren't interested in infrastructure as a service arrangements or subscription based outsourcing models cite common reasons such as their litigation or client profile wouldn't support that type of effort, the nature of their work requires technology or data be kept behind the firms' firewalls, they anticipate a profit or benefit to the firm or clients from managing and controlling the data themselves, not being sure about the maturity of the vendor market in being able to provide these types of service with consistency or quality, or they are unsure about how to bill clients through this type of model.

About



The Cowen Group is the premier provider of staffing and recruiting for eDiscovery, legal technology, litigation support, and information governance professionals. Our clients nation-wide and throughout Europe include 85 of the AmLaw 200 as well as 125 Fortune 500 companies and some of the most prominent vendors and service providers in the legal services industry.

To support our clients in their personal and professional growth, The Cowen Group hosts over fifty executive peer micro-events nationally. These thought-leadership workshops are designed to bring together legalists, technologists, consultants, and executives in a round table environment to accelerate their advancement in this rapidly-evolving space. Networking and collaborating with the right peers and professionals elevates the careers of the talent we represent and offers The Cowen Group unparalleled insight into the trends and market forces that are shaping our industry.

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