

January, 2010

# eDiscovery Is In The House

by Bridgeway Research

## EXECUTIVE SUMMARY

The debate is over. Companies have moved e-discovery in-house. Despite limited resources and inexperience, corporate and government legal organizations have conquered their first milestone; in-house preservation and collection are operational. Chief legal officers' impulse to lower costs and manage risks are now pushing them beyond a mere coping strategy and on to the ultimate e-discovery quest: end-to-end control.

## COMPANIES ARE STARTING SMALL

100% of the legal departments we interviewed are actively performing part of their e-discovery in-house (see Figure 1). But to master these newly adopted processes, companies are taking things a step at a time, starting with:

- **Legal hold and collection.** With recent technology, these two phases have become much simpler, less expensive and faster for an IT group to deploy. As a result, legal departments can quickly boost their control over e-discovery without a lot of fuss.

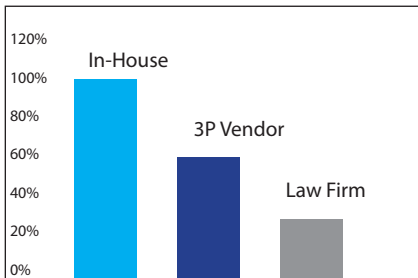
“We are leaning more and more on internal resources to do the collection... then sending it out to contract attorneys we choose for review. Outside Counsel is not managing it, we are.” (Financial Services Company)

“We do legal hold freeze letters and most collection ourselves, then the IT group packages it up, encrypted, to send to service providers for the rest.” (Plastics Materials Company)

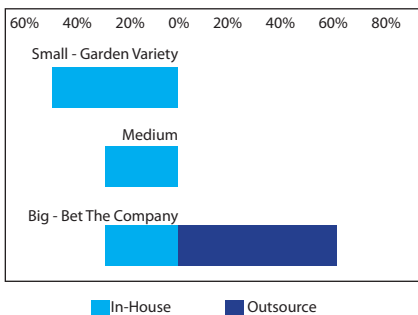
- **Small matters first.** The majority of law departments we spoke with say they are initially steering e-discovery in-house for garden variety litigation, like employment lawsuits, while going with outside service providers for complex, bet-the-business cases (see Figure 2). Companies are more comfortable cutting their teeth on smaller data volumes and simpler document types, leaving databases and financial spreadsheets for outside experts.

“The in-house vs. outsource mix on e-discovery comes down to simple cases vs. technical. In-house we will do the simple employment cases, even some class actions. But we will use outside vendors for antitrust and environmental cases where the search is more analytical, vs. a statute, and the data sources include structured application databases, not email or loose files.” (Paper Products Company)

**FIGURE 1**  
**In-House e-discovery Has Taken Off**  
 “How are you performing e-discovery today?”  
 (multiple responses accepted)



**FIGURE 2**  
**In-House e-discovery Is More for Smaller Matters**  
 “What types of matters will you do e-discovery In-House? Outsource?”  
 (multiple responses accepted)



## IN-HOUSE RESOURCES AND EXPERIENCE ARE LIMITED

Corporate e-discovery managers tell us their plans to bring more of the process in-house have some big hurdles to overcome. Although legal organizations say they are learning to make a good return-on-investment argument, their resource requests face some challenges:

- **Staffing and budget are the biggest barriers.** Law departments told us finding dollars and the right staff for e-discovery are the biggest challenges when bringing it in-house (see Figure 3). Holding onto the e-discovery team and talent is not easy either.

“At first it was very difficult to find IT personnel that could “get” the legal aspects of e-discovery and why we wanted them to run certain things certain ways, and why other approaches were extraordinarily dangerous. You can explain it to them and they say they get it, but they don’t internalize it to something that guides their decision-making.” (Oil and Gas Company)

“We lost one IT Manager from the e-discovery team who got promoted to somewhere in the company. So we had to take the time to track down the decision, get the IT Manager restored to e-discovery, but with enough promotion and pay raise to keep them in place.” (Energy Company)

“We have a great IT Manager for e-discovery and I’m terrified that someone will offer her more money or a promotion. Hopefully she’s getting paid well.”  
(Durable Goods Manufacturer)

- **Legal and IT need time to build rapport.** Every company we spoke with says in-house e-discovery is a joint function of IT and the legal group. But when pressed, most say legal must lead the way to make this blended family work.

“A team of IT and Legal work as a combined function, but Legal manages it because, bottom line, e-discovery is evidence gathering. I am the e-discovery lead and senior counsel for information technology, so I attend most IT meetings. They know and trust me, but otherwise IT and Legal view each other as the enemy.”

(Non-durable Goods Manufacturer)

- **Outside experts are still in demand.** When legal groups bring e-discovery in-house, the vast majority say the role of law firms doesn’t disappear, it changes (see Figure 4). Even though outside counsel is no longer running the process, it is still crucial for advising and negotiating on behalf of less-experienced in-house groups.

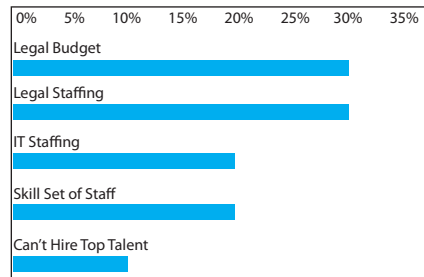
“Outside counsel still are the ones going to the meet and confer. There is always a lot of discussion with the other side about forms of production and exchange of certain data types and our outside law firm is heavily involved in the negotiation of all that.” (Diversified Products Company)

“For e-discovery cases we bring in-house, Outside Counsel would still have a role - to determine the risk and to manage the risk.” (Chemical Products Company)

**FIGURE 3**  
Staffing and Legal Budget  
Are The Biggest Challenges

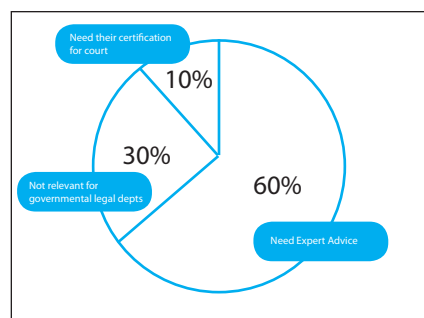
“What issues do you see bringing e-discovery In-House?”

(multiple responses accepted)



**FIGURE 4**  
Outside Counsel Advice  
Will Still Be Required

“How will your outside counsel be involved when e-discovery moves In-House?”



# ANALYSIS

## 1.) THE IN-HOUSE QUEST FOR END-TO-END CONTROL

Legal liability costs U.S. companies over \$200 billion annually<sup>1</sup>, a mushrooming cost of doing business that hits the bottom line<sup>2</sup>. At the heart of this expense is the cost of litigation and e-discovery. Corporate legal departments spend a whopping \$4 billion-plus annually to comply with e-discovery requests<sup>3</sup>. Faced with this reality, General Counsels want control: (1) the efficiency and accountability of doing e-discovery in-house, and (2) the sway over business units to reduce risky behavior. To succeed, GCs will build a game-plan with several key objectives:

- **Lowering e-discovery costs.** In-house counsels' growing obsession is to drive cost and uncertainty out of the e-discovery equation. How? Legal and IT are reducing costs by reigning in the volume of data at every step from end-to-end; turning to targeted legal holds, collection-in-place and early case assessment (ECA) to shrink the stack of documents they give billable review attorneys to handle.
- **Mitigating e-discovery risks.** In-house teams are also tackling the risks in e-discovery that inherently arise whenever electronic evidence is touched or transferred. The arrival of new integrated, process-driven systems can now equip companies with end-to-end quality controls designed to weed out the operational missteps that lead to spoliation, inadvertent disclosures, delays, and budget overruns.

## 2.) MANAGING THE LEGAL ENTERPRISE

Once GCs get a real taste for reducing e-discovery costs and risks, there will be no turning back. The urge to go further will be irresistible as CLOs seek more control by:

- **Optimizing legal spend.** Corporate counsel will fully embrace financial disciplines, like forecasting, reporting and analysis to improve the way they spend legal dollars. GCs will just add e-discovery spending to the process. Improved UTBMS eBilling codes for e-discovery arrive in 2010 and 2011, capturing payment details at every stage from preservation through production. The payoff? Matter management systems will then manage e-discovery expenses alongside the rest of litigation spending.
- **Managing legal liability.** General Counsels work routinely to cut their operational costs and risks, but managing liability is much harder. To do the trick, GCs will plan the right mix of prevention, analysis, and response. Whether imbedding corporate counsel in business units to thwart liability in the initial planning stages or using tools like ECA to triage liabilities that arise later, in-house legal teams will be energized with their newfound jump in control over liability costs and risks.

In the process, Legal and IT will attack a new priority – connecting eBilling and matter management systems to the e-discovery suite. For the first time, the resulting legal enterprise management platform will equip in-house teams with a new level of control – incorporating historical cost and litigation trends when choosing case-by-case e-discovery strategies.

## ABOUT BRIDGEWAY RESEARCH

Bridgeway Research is an experienced technology and strategy research group that provides practical advice to senior legal executives and corporate governance professionals. Since its inception, Bridgeway Research has been equipping leaders with the strategic insights they need to optimize their legal organizations through its unique research and analysis, assessment tools, leading practices and professional alliances. Bridgeway Research focuses on the performance and effectiveness of legal departments. In concert, Bridgeway Research shows legal and governance leaders how to create an integrated roadmap that gains strategic advantage.

### ENDNOTES

<sup>1</sup>"Fortune 500: The Total Cost of Litigation Estimated at One Third Profits," by John B. Henry, eLawForum, in The Metropolitan Corporate Counsel, February, 2008, p. 28.

<sup>2</sup>To put this in perspective, yearly CEO compensation at the Fortune 500 totaled \$7.5 billion

<sup>3</sup>"Believe It – e-discovery Technology Spending to Top \$4.8 Billion by 2011," by Barry Murphy, Forrester Research, December 11, 2006, <http://www.forrester.com/Research/Document/Excerpt/0,7211,40619,00.html>



6575 West Loop South, Bellaire, TX 77401 Tel: 713-599-8300 [www.bridge-way.com](http://www.bridge-way.com)