2010: trends in e-discovery for contract attorneys

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It's that time of year when it seems everybody has come out with predictions about e-discovery for the coming year. And the recent Gartner report on the upswing in e-discovery in the U.S. and around the globe (*click here* and *click here*) and Fulbright & Jaworski's 6th Annual Survey (*click here*) comes as no surprise.

But none focus on the trends directly affecting contract attorneys and computer forensic reviewers (the largest percentage of our membership), the ones in the trenches. That will be the focus of this post.

*Note to new readers: When we started The Posse List in 2002, our base was contract attorneys in document review and production on large cases that required an army of reviewers — called in like a "posse" at the last minute, hence our name. As the technology improved, the need for these large teams declined, but the need for review expertise and additional information and expertise in e-discovery continued to grow. That growth expanded internationally, and we expanded our Posse List team to focus on the impact of ESI management on cross-border litigation and investigations. We launched **The Posse Ranch**, which focuses on solo practitioners and those seeking to leave the document review world, and we also launched **The Posse List (Europe)** and **The Posse List (Asia)**. We also launched **The Electronic Discovery Reading Room**, a central location for contract attorneys, law firms, vendors and others to learn the about the basics of e-discovery, ESI, cloud computing and general issues related to modern litigation.*

Our network of websites now attracts forensics consultants, paralegals, in-house counsel, law firm attorneys, solo practitioners, e-discovery vendors, legal media, and others, in addition to our original population of contract lawyers.

So, what trends in e-discovery do we see affecting contract attorneys as we are about to enter 2010? What will affect them most?

1. **Linear review is declining, but not dead**. Granted, we are at the beginning of the widespread deployment of amazing search technologies (more on that technology below) which will revolutionize review. But despite all the advanced technology coming to market (predictive coding, advanced early case assessment, etc.) you will always need some element of "eyeball review," although we do admit linear review with armies of contract attorneys clicking through documents is slowly ending. But the legal industry is… to put it mildly … risk adverse. Despite the lamentations **Richard Susskind** and **Jordon Furlong** that the law profession

needs to understand the tectonic changes that are occurring, and that change will only come slowly. These technologies will be deployed slowly. Large linear review will continue through 2010.

2. **Electronic discovery data (EDD) companies continue to move into the "right-side" of the EDRM — review and production.** We continue to see traditional staffing agencies teaming with EDDs and moving into the right side of the EDRM (for example Fios and Ajilon, Huron and The Dine Group, etc.). But in the last two years we have also seen (and we will continue to see) e-discovery companies building "special ops" contract attorney review teams within their companies, many of them full-time employees. Those types of jobs have increased on our job posting lists. With the right set of tools, a small number of tech-savvy attorneys can rip through massive amounts of data in a very short amount of time. This past year we saw a large FCPA case review and a large IP litigation review — with nary a staffing agency in site, all handled by the respective EDD. We will have more on these vendors starting tomorrow when we launch our new series *"Data! Data! Data!* which will include interviews with EDD vendors, law firms, in-house counsel, and independent e-discovery experts.

3. **Project management gets serious**. As ably reported by **Paul Easton** and **Charles Skamser** (we will have extensive interviews with each of them in 2010) litigation support costs will continue to be reduced with the combining of document review services with more traditional litigation support services. Merrill Corporation, Fios/Ajilon and other companies are doing this, and quite successfully. It offers new roles and more opportunities for contract attorneys. And the key to all of this is project management, often a misused phrase in this industry. As Clearwell Systems said in their 2010 predictions post *"staffing roles will continue to evolve with a newfound focus on project management. The role of an in-house e-discovery coordinator will emerge as more of a project manager across the entire e-discovery process and has expertise in both, legal and IT. This shift will become increasingly necessary as e-discovery evolves into a standard business process that is repeatable, measurable, and defensible."* (For their full post *click here*). Again, more opportunities for contract attorneys.

4. **In-house use of contract attorneys/temporary attorneys will continue but perhaps with no dramatic change.** We attended the Association of Corporate Counsel annual meeting (*click here*) where many GCs and AGCs told us they were increasing their use of contract attorneys in-house (confirmed by staffing agencies that do in-house placements). Increasing but maybe not big time. We recently received a copy of the Hildebrandt Baker Robbins **2009 Law Department Survey** (Hildebrandt Baker Robbins is a unit of Thomson Reuters which provides information for The Posse List) and the study includes a fair amount of data on cost control strategies. The survey found that 73 percent of the companies have no plans to increase the use of contract/temporary staff. Only 13 percent have increased the use of contract/temporary staff while 14 percent are considering this option. **Rees Morrison** also commented on this trend and said that *"large-scale changes in how general counsel manage their legal teams seem not to be underway or imminent. Even where legal departments have „increased the use of contract/temporary staff" the cause may be unrelated to the economic downturn. It may be a planned, short-term expedient. We cannot know from the data."*

5. **The Big Enchilada will be Federal government contract work.** There is a flood of work from the FDIC, SEC, Treasury, etc. — standard financial document review and processing contracts — which we reported in numerous posts this past year. There must be 10 contracts a week posted to the FBO (Federal Business Opportunities) contract boards. Congress recently passed appropriations bills for most of the executive branch departments and agencies. The SEC received funding for approximately 1,000 positions ranging from attorneys to accountants to investigators; the FDIC got funding for 1,500 term-limited positions, mostly bank examiner positions; the CFTC was funded for a boatload of new positions. The best thing? The government loves linear review and hires teams of contract attorneys directly or through staffing agencies. Some positions require security clearance although most do not. The "go to" agencies that get a big chunk of this work are Continuum Legal, Legal Placements, and Pat Taylor. You can find their contact information *by clicking here*. But again, the EDDs are making their mark here as well. In the last year we saw the DOJ turn

to their EDD company provider, on two cases, to also handle the review and production. In 2010 we are going to focus more on government work opportunities for our membership.

6. **Foreign language document reviews — the old reliable will continue, as will work in Europe**. As we have reported, FCPA and IP litigation cases dominate the U.S. project/contract attorney market. We estimate they comprise 80% of our postings. Based on our survey of 47 contract attorney staffing companies across the country it is the highest percentage of their work. And most are standard linear reviews. Companion to this continuing trend is the increase in work in Europe (we know 8 reviews going on right now in Brussels, Dusseldorf, London, Luxembourg, Paris and elsewhere). It is due to blocking statutes which prohibit the transfer of different types of information across country borders, and were enacted with the goal of protecting sovereignty and commercial interests from interference by foreign states. For some background *click here*. There is a large base of contract attorneys in Europe. The Posse List (Europe) listserv has 1,100+ members (U.S. and EU licensed attorneys) and law firms and corporations first look for "locally based" contract attorneys to staff projects. But there is a growing demand for U.S.-trained/experienced attorneys for privilege review and project management so we'll see more opportunities in Europe for Posse List members. To subscribe to the Europe list *click here*.

7. **The future of search … Hal 900?** As we read more and more about Web 3.0, the next generation of the internet, we also read more and more about "the future of search". As Charles Skamser recently wrote *"e-discovery is already the perfect arena for semantic search as users can isolate information, develop ontologies and then ask the Hal900 type questions like, "what relationships exist between these custodians that are not apparent?". Or, "tell me about potentially important relationships that may exist outside of the known custodian?"* For Charles' full post *click here*. At the forefront of all this? Google and Microsoft. Google recently launched "snap and search" or "Goggles" by its product name (*click here*). It's a smartphone application and it allows users to search the Web, not by typing or by speaking keywords, but by snapping an image with a cellphone and feeding it into Google's search engine. How tall is that mountain on the horizon? Snap and get the answer. Who is the artist behind this painting? Snap and find out. What about that stadium in front of you? Snap and see a schedule of future games there.

But this is just the tip of the iceberg. One of the great things about the Posse List membership base is that it is so diverse. Among our members are web developers and computer forensics experts who are invited to all the specialized, high-end Google, Microsoft and Apple web developer conferences/seminars. And they keep us in the loop. As they tell it, Microsoft and Google have been snapping up ontology-tech companies, analytics companies, etc. and doing all kinds of funky things in "next generation" ontology technologies. To them, current e-discovery search technologies are "primitive". They are developing new search technologies that will allow attorneys "to find just about any information they need, to understand all the relationships they need, and to proceed with their case from a thorough knowledge of what is their data set". Ok, we heard the same thing about key word searches, too, a few years back. And predictive coding. But with their R&D budgets in the realm of 50 gazillion dollars, they just might develop something … Hal900 notwithstanding. Will we see it in 2010? Probably not although in February during LegalTech you will see The Posse List interview with some Google and Microsoft developers about this whole search topic. But we do expect, at the least, that these tech gurus provide us with definitions of what follows brontobyte and geopbyte — levels we'll probably hit next year.

As always, we appreciate your questions, comments, complaints and suggestions. Please email us at **manager@theposselist.com**

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