

We Have a Tool for That
A Guide to Developing Your Litigation Support Arsenal



The litigation support industry has changed rapidly over the years and there are now technologies readily available for every aspect of a case. Whether a litigation support professional works in a law firm, corporation, government agency, or service bureau, the mission is the same: promote and support the use of technology to aid attorneys in the practice of law and delivery of client service. In order to accomplish this, there must be an understanding of the unique needs of clients and an arsenal of technologies, both new and old, which can be applied at a moment's notice.

The Evolution of Litigation Support

The largest agent of change for litigation support continues to be the increasing volume of information that requires collection, review, and production during discovery. Clients which once generated a few boxes of documents now create document populations that are more easily measured in gigabytes. These records are disparate, easily created, duplicated, and destroyed. Electronic discovery has increased the complexity and costliness of the review process, and as a result, has rendered very useful efforts, such as manual coding, inefficient or even outright cost prohibitive.

We, on the litigation support side of the industry, have also been agents of change. We have made great strides in explaining our role to the attorneys and clients we support. They have taken note of and directly benefited from the speed at which we work, the skill sets we bring to the table, and the tools we are able to bring to bear.

More experienced attorneys developed their expectations of our industry technologies in real time as the industry, as an "industry",

developed. Email blasts offering costly technology seminars, lobby bombardments of industry publications, marketing materials in the mail, and onsite electronic discovery presentations within many firms have further exposed these attorneys to possible solutions. More recently, the law school experience includes some portion of this list. As a result, younger technology-savvy attorneys now enter the practice of law with pre-existing knowledge of litigation support. With greater exposure to both groups comes a higher level of expectations.

So Many Tools, So Little Time

So, who builds the best mouse trap? *Answer:* The tool that is utilized before a case is filed and continues to be utilized until the final appeal or settlement. It is all-knowing, perfect for every type and size of case, never has any bugs, and is also expensive. Too bad it does not exist.

There is no silver bullet technology. The needs of litigators are too varied to allow the development of such a tool, yet despite recent consolidation within the industry, numerous tools suited to litigators needs still exist, albeit under a new corporate umbrella. These tools remain available because each presents a good fit within a single stage of the litigation lifecycle.

Focus On the Business Need

The key for each litigation support professional is to develop an arsenal of tools that best serve their team. There are many fancy new tools that "slice and dice," but would fall flat in certain environments because they do not meet the needs of the litigation group. Whether by reviewing case management systems, interviewing key players, or shadowing select

individuals, you should clearly understand the answers to the following questions:

- What is the average timeline for a litigation matter of this type within a given jurisdiction, district, firm, or court?
- What types of records do clients maintain and in what format or system?
- How many sources, sites and custodians are generally involved?
- What is the average collected volume of discovery for this client?
- What percentage of that volume is usually produced?
- What percentage of that volume has been reviewed previously with results still available?
- Where are the bottlenecks in the discovery process?
- How large are the in-house and outside legal teams?
- How technologically savvy are those teams?
- How cost sensitive are key clients?

Warning: Do not ask “what type of tool are you looking for,” as it will potentially handicap your efforts with overly specific requirements.

We Have Just the Tool for That

Armed with a clear understanding of needs, the software selection process will largely guide itself to the technologies that require a more in-depth look. Do this research early and update it often! If an “Approved Vendor List” is more than a year old, you may be playing with one hand tied behind your back. Invite technology companies to send you updates regarding new features and functionalities. The technologies available today are changing and may become obsolete, or even nonexistent, during the

approval process. More importantly, do not limit your research focus solely to tools that meet a pressing need. The goal is to remain continually proactive and not continually reactive. In doing so, the solution to a previously unseen need is a mere signature away.

Know Your Software

While software “X” may be perfectly tailored to one legal team and software “Y” more suited for another, it certainly might make better business sense to engage software “Z” if it meets the primary needs of both groups. Though there is no silver bullet, working with a suite of tools under the same umbrella can often offer cost savings in both licensing and support. However, close attention should be paid to how well such tools, or any tools for that matter, “play well together.”

When standardizing or promoting the use of any tool, a clear understanding of its capabilities and limitations is paramount. Take, for example, a legal team that is well trained on the software they use at trial and later decides to conduct a full-scale discovery review using the very same software platform. Before moving forward, pay close attention to the scalability, flexibility, speed, user license, access requirements and any automated workflow availability. Contrast any potential sticking points against providing training on a tool more appropriately suited to the task.

Get the Demo Copy

While an hour demonstration may be informative, it comes nowhere near offering the insight gained from “banging on” a tool in-house. In addition to flushing out what was marketing versus what is reality, working with

software within your current environment will bring to light any incompatibilities with both your systems and your user base. During testing:

- Always have litigation support teams conduct initial testing.
- Liaise with any IT counterparts before testing to ensure compatibility and future enterprise support.
- Utilize previously encountered data sets for comparison purposes.
- Document each step for later use in creating training programs.

Once a demonstration period has achieved the endorsement of internal litigation support resources, a pilot group comprised of relevant end users must be engaged. They will confirm whether the business need is truly met, facilitate buy-in (a cheering squad if you will) to be tapped during a potential roll-out, and further aid the development of end-user training programs. Beware of initial reactions as they may or may not be representative of long-term usability. Pretty colors and a smooth UI can hide a poorly constructed product. Likewise, learning any new technology can be trying, so initial complaints regarding software's usefulness should be revisited and confirmed as the testing period continues.

In some cases, the technology provider may not allow a "try and buy" program, or the required resources (capital or natural) make an onsite test impractical. In these circumstances, request that the provider utilize their technology with your own sample data. Though this will not provide a full understanding of the end-user experience, it will illustrate the ultimate benefit of the final result. In some cases, an immediate business need will exist,

but resource availability may not allow for immediate purchasing. Contact the technology maker and request that they allow a one-off service engagement whereby the technology is utilized with live data at a negotiated price point.

Concluding with an Example

You've watched as the amount of paper discovery balloons for each new case that crosses your desk. Combine that with the added volume of ever-growing electronic discovery and client cost concerns. It is clear that previous minor cost concerns are now major concerns. *Example:* manually coding every record. It is no longer an efficient or cost effective option, whether conducted domestically or offshore. Yet without coding, your review team will be limited to OCR, extracted text, and whatever metadata is present in the native collection.

Having recognized the business need, open your "we have a tool for that" folder and retrieve the preselected and prescreened software solution, which in this example is coding: auto-coding with ALCoder. For the cost of a single license, you are able to code more pages in one hour (up to 25,000) than your current manual coding team could cover in a week or possibly a month. The quality of auto-coding is directly related to the quality and composition of your document collection. ALCoder rates its work product on an A – F scale. "D" and "F" documents should be manually reviewed as they are likely handwritten or poor quality documents, which even without auto-coding would not return results in any searches conducted within the review platform.

Beyond the associated cost savings of auto-coding, you recognize that ALCoder will allow

you to provide your legal teams with quicker access to a collection containing meaningful information for their review. Remember, because standard metadata describes only the electronic file and not necessarily the document held within, auto-coding electronic discovery will also provide more insight to the review team. Such as, is there a mismatch between Custodian as applied by ALCoder and that found within the metadata? Additionally, you will be able to differentiate the actual date of the document contained within an electronic record from its creation and saved dates provided by the standard metadata. Both of these are potentially very useful, and would be otherwise unavailable to the review team.

So there you have it. A clear business need, a proactive solution, and easily demonstrated business value. That is how you build your arsenal.

About the Author

Sean Sweeney is Principal and co-founder of LITMG, LLC, a litigation support technology and consulting services company headquartered in Pittsburgh, PA. Previously, Sean served as Manager of Practice Support and then Chief Information Officer for the law firm Burns, White and Hickton. Sean has also served as Litigation Support Trainer for the U.S. Department of Justice.

LITMG, LLC ("LITMG") provides proactive, reliable, and cost effective litigation support solutions to corporate, government, law firm, and service bureau clients. LITMG advises clients on issues relating to electronic discovery and litigation support management, as well as offering robust collection, processing, web hosted review, and production services.

For more information about LITMG, please visit www.litmg.com or email info@litmg.com.

Rosen Technology Resources ("RTR") provides litigation support services, software sales, consulting and training from the beginning of a case through trial. RTR was founded in 2005 by Lisa Rosen, an award-winning legal technology consultant, trainer and speaker, with the goal of providing high-level litigation support consulting to law firms, service bureaus, corporations and government agencies.

Over the years, RTR became the industry standard in consulting and training services, while acquiring the leading auto-coding product in the industry, ALCoder. Used all over the world, ALCoder has become a unique way to decrease spending while increasing revenue and providing a technological advantage.

For more information about RTR, please visit www.rosentech.net or email sales@rosentech.net.