



Webinar Transcript

Burst Capacity: The Underbelly of the eDiscovery Beast

Well hello everyone. Digital Reef would like to welcome you to the first session of eDiscovery Best Practices Seminars. Today's webcast is called "Burst Capacity: The Underbelly of the eDiscovery Beast."

My name is Colby Dyess and I am the Product Management Director for Digital Reef. I will be acting as today's moderator.

Before we get started, I'd like to go over a few housekeeping items. All of your lines have been muted, mostly just to get rid of the background noise. We hope you take full advantage of the Q&A feature in your WebEx screen. You can ask questions throughout the presentation. We will do our best to answer all of the questions during the presentation. And if for some reason we do not get to your question, our team will certainly follow-up with you off-line. Our contact information will be provided at the end of the presentation, so don't hesitate to call or e-mail any of us for your needs. This webcast is being recorded and a copy of the presentation will be available at Digital Reef's Resource Center online. That's at www.digitalreefinc.com, under the Resources Panel.

I'd like to start by introducing today's speakers. With us today is Cliff Dutton. Cliff is a leading eDiscovery management solution leader. His firm, Dutton LLC, helps customers achieve efficiencies in all phases of eDiscovery projects. Cliff has architected systems that have processed billions of documents in thousands of matters. He's an early innovator in eDiscovery. In fact, Cliff served as the lead technical editor for the first eDiscovery reference model project. He's also testified in U.S. Federal Court as an electronic discovery expert in securities class-action litigation and he's advised members of Congress on the application of electronic discovery technologies to terrorist threat detections. So, welcome. Thanks, Cliff.

Cliff: Thank you.

Colby: With us also is Wuk Kim. He is the Director of Electronic Data Services at CopiSolutions. Previously, he was the electronic data manager for the forensic division of KPMG LLP, where he worked for several Fortune 500 corporations and Am Law 100 firms. He helped in responding to requests for ESI or electronically stored information from various regulatory industries. Hey, Wuk.

Wuk: Thank you.



Colby: And also with us is Mike McClelland, a Senior Systems Engineer with us here at Digital Reef. Prior to Digital Reef, Mike was the CTO of Steelpoint Technologies, which produced the Introspect review platform. Mike was also the director of business development for Diversified Data, a producer of CASbar and other Centera products that all eventually sold to EMC. Hello, Mike!

Mike: Thanks, Colby.

Colby: Great!

Today we're going to be discussing burst capacity. One way to think about burst capacity and what it means is to consider the following: Your team and your processes typically handle an average number of cases and an average amount of data. However, sudden spikes in either caseload or data volume can create tremendous pressure to process and review more electronically stored information in the same amount or less time. Today's panelists are going to describe how organizations are affected today, and recommend steps to avoid or mitigate the challenges of burst capacity needs.

So let's begin. Cliff, you work with organizations all over and you've got pretty good insight into how they set up their infrastructure and their operations. Can you give us a sense of the operational factors that lead to bursting or challenges to bursting?

Cliff: Sure, Colby. First of all, sometimes burst requirements are just inherently necessary because surprise litigation happens and a scheduling order is issued and there's just a lot of work to do and not much time to do it in. So that sometimes just automatically leads to very high volume requirements very suddenly and we can call that a burst. However, it's not always necessary to face those burst requirements if there's a good understanding in the legal team about what the specifics of the IT environment are for that particular corporation. What I mean by that is if the legal team understands things better, they are often able to negotiate more effectively in meet and confers so that they can affect the scheduling orders and try to mitigate some of the burst process from the general legal obligation side of the fence, rather than just trying to process more data quickly. But sometimes, however, we do have to process more data quickly, and in that case you need to have efficient processes in place to identify, collect, process, filter and then review the ESI.

Colby: Hum, that's a good point. I think it's a little bit different where you work with organizations that may have to do some discovery in house. Wuk, as a guy who's worked in service bureaus, how's this been different, how has burst capacity contributed to the challenges in your world?

Wuk: Oh, I often think service bureaus are some of the last people to know that there's a tight deadline with competing interests. I think some of the more unique challenges that service bureaus face are that there are competing matters, often for different clients, and when a burst requirement opens up, you sort of get that going downstream.

Like Cliff mentioned, I think one of the ways that service bureaus can help their clients meet that is to try to present information and organize it in intuitive ways to help their clients present this information during meet and confers, where I think a lot of the pain and resource-intensive processes could be headed off with some negotiations with opposing counsel or regulatory entities.

In order to do that, though, you need be able to present information quickly and in an organized manner so that the client can make decisions from that data that you've provided to them.

Colby: Do think that some firms are not well equipped to have that kind of process? Is that perhaps one of the challenges?

Wuk: Yes, two things: they don't have the technology or the process in place to present that information to their clients. I think one of the things that we can do is know the matter intimately so that we can present more information that's relevant. No two cases are identical and so trying to understand what's relevant in this matter and what will really get at the guts of either the investigation or the litigation will really help cut down the volume and ease some of the pains related to a burst requirement.

Cliff: If I can follow up on Wuk's point there. That determination of relevancy is very important and anything that can be done to help the legal team understand what tools are available to help them refine relevancy early on is a great service. Many times, those of us who are more aware of some of the advances in technology in electronic discovery assume that everybody knows what we've learned over the past few years. But legal teams often are not fully versed in technology and how it might be used to achieve a narrower set of potentially relevant documents sooner, so that fewer hours need to be spent by human beings reviewing documents. So participating in that conversation and being a resource technically that says "here are some options." Not to make the legal decisions, but to present the options so that the legal team can make good decisions about potential new methods of coding, how they're going to approach culling, filtering, and things like that. Participating in that conversation and helping to establish a plan with a forecast of how long it's going to take is one way of mitigating the effects of burst requirements.

Colby: Mmm. These are great points—but there’s the people side and there’s the technology side. I want to bring Mike into the conversation. Mike, with technology changing as quickly as it does, just like Cliff and Wuk pointed out, you’ve got a unique perspective on the storage side. So maybe you can describe how storage is contributing to some of these challenges.

Mike: Well, certainly. Technology is advancing at a remarkable pace. Everyone has heard of Mohr’s law, where the number of transistors actually on the surface area of a chip are doubling every so often, well there’s also one in the storage world called Kryder’s Law, which says that the storage capacity of disks essentially doubles every 18 months. And we’re definitely seeing that. I can, for \$120, go buy a 1 terabyte drive, 2 1/2-inch drive, and put it in my laptop. It only takes 5 or 6 of those encased images or DD images of those sized drives and suddenly you have a burst situation on your hands. And it will, of course, be extremely important to understand the matter and have a level of communications with the case team so that you can completely understand what a defensible search strategy would be that can cull those documents down. But physics is not our friend—these drives are getting bigger and bigger all the time. It’s becoming easier and easier to collect so much more data. The idea of reasonableness in terms of technology is stretching as well because courts are expecting you to be able to get to more and more data, because the technology to access that data is becoming more and more advanced.

Colby: So if there’s the people, process, and technology, are there other things—external factors—that are also increasing the burden or increasing the pressure? Cliff, you may have some insight into this... organization needing to respond to...

Cliff: I’ll borrow a phrase from my friend, Jim Anderson, who’s at Brown University. He’s one of the leading cognitive scientists in the world and he has referred to human beings these days as “information emitters.” We’re all like the radio towers emitting a constant stream of information, and that gets stored in enterprise IT environments right now. And it’s not only stored as text; it’s stored as audio and video files attached to our e-mails. So the density of information per custodian is going up dramatically and it’s harder and harder to extract that information and index it in a way that’s searchable for the purposes that we have in electronic discovery. One of the biggest challenges that we have is not just more custodians, but more data per custodian. Organizations that are trying to be what we in the industry call “litigation ready” are struggling with how to best prepare for this kind of requirement, where they need to collect such large volumes of information per custodian. A litigation event hits and you determine whether you’re really ready or not. And that’s right at that point where the impact in the organization happens; when an actual request comes down and it says that we need all of this information

from these custodians for some period of time. And if that isn't properly organized in advance, it can be extremely difficult to identify and collect the appropriate ESI.

Colby: So that's actually a great segue into the next section here. Let's talk about how plans in organizations are impacted by the growing data or their fragile processes. I just wonder what specifically happens to organizations that aren't prepared to handle these burst needs. I guess I'll put the question to Wuk. How do you help your clients avoid this ... I'm sorry, what issues do clients hit when they're not prepared for burst capacity?

Wuk: I think it's more of a labor and time perspective that really puts a strain when you have unexpected volumes of large data. Mike touched on a couple of points earlier in terms of storage needs. You can't ramp up that kind of storage when your client tells you to go. Those things need to be in place weeks or months before the actual burst requirement hits. For people like myself who come from a service background, trust is very hard to gain and very easy to lose. I think that needs to drive people's decision making in terms of how they structure their organization to carry some sort of excess capacity for events like this. Not doing so potentially puts your relationships at risk. You don't want to be that service provider who has to turn down work because there is too much work in house or because you can't meet the needs of your client. I think for service bureaus trying to anticipate the needs is almost like staying two steps ahead of the game; anticipating those projects even before you get work and knowing that you might have to process that data.

Cliff: And that sounds right to me as well. I think, in addition to having extra capacity, having an architecture that's nimble so if you do need to expand your storage footprint quickly, you've surveyed the available storage provider vendors to make sure that whatever infrastructure you have can expand quickly. And certainly there are vendors that make that easier than others.

Wuk: Yes, scalability not only in terms of your storage but your processing tools is also a big issue. With Digital Reef, I think you have a solution there that is highly scalable so that you are able to better maneuver around these burst capacity issues. Some tools just don't have that type of flexibility so that's one thing to consider whenever you try to decide to invest in specific solution.

Cliff: And I would say that both service bureaus and corporations can test that hypothesis when they're not in a crisis. There's nothing wrong with doing a dry run on a project when you're not faced with a burst requirement and sort of testing it out. Any other mission-critical function in an organization gets evaluated and tested on a regular basis, even if it isn't needed. Your diesel generators get fired up every now and then to make sure they work even when you don't have a power failure. So

part of making sure you are “litigation ready,” is practicing on non-consequential test situations so that when something consequential comes along you know all of the process pieces are in place and it’s going to work.

Mike: I think that speaks well, Cliff, to Wuk’s point of trust. Being able to know what your capacity is and having tested your processes that are very different for a small matter than they are for a large matter. In terms of infrastructure requirements and in terms of being able to handle the physical act of copying files from one place to another, is a real challenge when you get to certain sizes. Being able to comfortably understand what your capacity is and knowing what your limits are can help you maintain that trust relationship as well.

Cliff: That’s exactly right and that’s true even inside organizations as well as within their external service providers. Inside an organization, if the CIO says to the chief compliance officer, “We are ready to respond to whatever requirements that you have for electronic discovery because we’ve put in a system that says we’re litigation ready.” But if that system hasn’t been tested, and then you do face a real requirement and all the information you need isn’t available, then that trust is broken internally as well and that can have damaging consequences on individuals and on corporations.

Mike: Absolutely. It’s similar to not testing your back-up system and saying that you have good back-ups.

Cliff: That’s right. And it happens... all the time.

Colby: So trust comes up quite a bit and that makes a lot of sense. I noticed that Wuk had picked up on, for service bureaus, a kind of cost or revenue impact here if you have to turn away business or if you attempt to take on more business than you can actually handle. I wonder, either Cliff or Mike, when you’re working with clients, are there similar economic impacts that you’ve seen or that you know businesses have experienced?

Cliff: I’ll start. The exposure to electronic discovery expense has a huge impact on businesses. When there’s a burst requirement, and you have to pay fees for expedited handling, then that can have a dramatic effect on the corporation’s exposure to those costs. So it absolutely affects the defense of any particular matter.

Mike: I totally agree. Project management, whether it’s handling ESI or any situation, is extremely important. It is all about managing your customer’s expectations and being able to successfully do that by understanding your requirements and their requirements, and timelines, and being able to set reasonable expectations and then

meet those goals. So having a system that has some elasticity in it in that can scale up or even down to meet the needs of a particular matter is extremely important. Being able to choose a NAS over a SAN for being able to expand volumes, for example, gives you more flexibility. While it might be less in terms of overall throughput, it is certainly more in terms of being able to give you that elasticity necessary for bursting.

Cliff: I would underline your word “might.” It *might* be less to use a NAS solution on a short-term perspective...

Mike: Sure, sure...

Cliff: ...it may actually not be less. The dynamics of that is also important to understand for all the players. I would also say that it's important that everybody involved understands that when we talk about burst capacity, we're not only talking about the processing components of it, although that's the focus of today's call. Everybody needs to understand the workflow implications in a burst environment where the final workflow is an actual review team of human beings that are looking at some volume of documents. And the more efficient that human resource can be made, the more money can be saved. Because, in the end, as expensive as the processing of ESI is, the review of the results of the processing of the ESI is dramatically more expensive. All of these tools that are coming out that are being used aggressively in some environments and are totally unfamiliar in others, that allow for things like similarity analysis of documents and the clustering of certain concepts so that they can be assigned to review teams or the auto coding or predictive coding of certain documents that have not yet been reduced to black, white, or law in many instances, certainly are being adopted as efficient strategies in workflow and that is part of the conversation that the technology team needs to have with the legal team. Everybody needs to understand the kinds of choices that can be made to reduce the overall cost of the project, not just the processing cost.

Wuk: I completely agree with what Cliff just said right there. I think sometimes service bureaus are at fault for not advising their clients of some of the options that are presentable to them that would achieve more efficiency and reduce the amount of time a human has to take to review this. One example would be something as simple as language detection on a document—being able to identify those upstream or up front and segregate them so that they're reviewed by people who can actually understand and interpret them in the language that those documents were written in—can dramatically increase review efficiency. And as much as processing costs and ESI and eDiscovery costs are our focus here, I think an even bigger cost is simply the human time spent to review these types of documents. Service bureaus can do themselves a favor by viewing themselves as more of a partner to their client

than actually having the vendor mentality. Advising their clients on the types of things that are available to them that often the clients are not aware of would present themselves in a favorable light and go a long way to establish some of the trust that we talked about earlier.

Colby: Now what I'm hearing is a lot of being able to cull down data, large volumes of data, and get to legal teams, the reviewers, a small set of data, to reduce the time and cost. One thing that we're not yet really talking about is the amount of time it takes to just process, just in general, as either the types of data or the volume of data is introduced. And that seems to be a component as well - the more quickly you can get a very relevant set of data to clients today. So is the processing speed important? How does that play in terms of impacting the organization?

Wuk: I was just going to speak from a service provider perspective. That's one of our biggest issues - trying to go through process data more quickly. Why that's important is not necessarily getting the documents in front of the reviewers, but to give information, aggregate information, in intuitive ways, so that the attorneys can make decisions on how things will be impacted downstream. The inability to present or process data and therefore present that information that's extracted from it in ways that the attorneys or whoever your clients are would be helpful in negotiations with the other side or another regulatory entity, and that is what's driving a lot of this. Tools, like Digital Reef, that can process information quickly and are also highly scalable are at a tremendous advantage over their competitors because they can give the information that's needed to make decisions on how the rest of the discovery process will unfold.

Cliff: That's right. And processing speed is critically important because it's one of the phases, one of the processes that need to be done in what is oftentimes a forced march against a scheduling order. You don't get to choose to extend the deadline. So everything that can be done to get that information to the review team earlier helps achieve whatever the deadlines are. Of course, instantaneous processing would be good. The faster it can be, the better it is. And there's dramatic impact and benefit to the overall project. But that entire piece has to do with just one element in what has to be a discovery plan that includes the collection, processing, and then review of whatever potentially relevant data there is. If there is a very clear plan that includes everything that we've talked about in processing efficiencies and then review efficiencies, and the whole team understands what that is, it then needs to actually be monitored. Because if you're not measuring how many documents are being reviewed by each reviewer per hour, you can't possibly know whether you're going to be finished on time, whether you need more reviewers, or whether you need more aggressive workflow strategies. You need to monitor all of those variables early so that your plan has a chance of succeeding.

Colby: Those are good points and you're actually helping us get right to those ideas of how best to handle burst capacity—the planning side of it. I'd like to ask the panel what they think about communication, the role of communication in preparing for and effectively handling a burst capacity?

Mike: I will pick "work." [All laugh]

Wuk: Restate the question for me one more time.

Colby: Sure. I'm thinking about how communication plays a role in what we talked about today; communication is key here. I wonder if you can describe what parts of communication would help an organization prepare for, and effectively handle, burst capacity.

Wuk: You know communication with a client, I think basically revolves around keeping them up to date on where you are in your linear process to give them their deliverable. The more transparent that process is, I think, the more confidence your client will gain in both your organization and the process that you've outlined for them. One of the mandates that I try to live by is to define a linear process and not only define it, but then educate your client on what that process is. I think communicating the steps of that process goes a long way toward satisfying your client and reassuring them that you're doing everything you can to meet their needs.

Cliff: I would say that communication is critical. And for me there is really one simple take-away that I try to make every organization that I work with just believe in, and own, and remember. Because it's hard to remember complicated things, I make it a very simple thing, which is "have a plan." It's so rare that people actually write down their plan of discovery and then monitor it, but the people that do know whether or not they are going to meet their deadlines. So making a plan that includes everything from the collection phase all the way through the review and then monitoring the process and the progress that you're making against that process is critically important. And the only real lever that people have at the outset of an electronic discovery project is managing the scope in the first place. If the legal team can understand the IT environment sufficiently well to argue for limitation in scope, then they're saving dramatic money in every subsequent phase. They save money in processing data unnecessarily and if they can avoid processing certain kinds of information from different sources, then they can avoid the review of that information. So three things that I try to leave people with is: Make a plan, manage the scope aggressively at the outset of that plan and then monitor the performance of the plan as you go through it. And if those three steps are taken, then more efficient projects can be achieved.

Colby: Hmm. Cliff, you called out IT and legal in there, I believe. And are they communicating effectively together today. How might they?

Cliff: That's a nice question. Sometimes... and sometimes they're not. So one warning sign that all organizations at the highest level in a C suite should understand is, if IT and legal are not on familiar terms regularly, then it's not likely that they're going to be on familiar terms when a litigation crisis hits. So it's important that these topics be part of the regular flow of communication in an organization and it's not just all of a sudden when a crisis hits that we've got to figure out who these people are in IT, if you're on the legal side or who are these people are on the legal side if you're on the IT side. And having that clear communication about what will happen is part of that readiness. Readiness is not just a technological problem, it is a human and process problem, and many times those organizations don't know each other well enough and that can lead to significant challenges.

Colby: So, I imagine that in making a plan, you've got to get IT and legal together. Not one side owns that plan. They'd have to collaborate on it.

Cliff: Oh, absolutely. But they both need to buy into it. Neither side can just wish it into being. It's got to be fact-based planning that says we all understand what's going to happen and why, and that leads to better outcomes.

Colby: Mike, as a former CTO of a review platform, and a guy that's been consulting for large organizations, and now somebody who works for Digital Reef helping clients, how do you see clients today getting prepared for their burst capacity?

Colby: Mike McClellan, ladies and gentlemen.

Mike: Oh, sorry. There are three big things that we've already talked about: the people, the process and the technology. On the technology side of things, things are moving at a pace to make it so that we're going to have faster and better storage and processing, but it's important to have a system that can take advantage of that. Some of the monolithic systems that can run on a single machine, there are just some problems that you can't solve by dividing the job up into multiple pieces. And then there are problems that can be solved that way and so being able to identify where to put that technology is important.

From a people standpoint, having the ability to be able to effectively get the details necessary to construct a defensible culling strategy is going to be important. Either if you're a client and you're communicating this to your service provider or if you're a service provider collecting that information from your client or if you're a

consultant attempting to facilitate discussions between a client and a service provider in the law firm. It's important to understand that the most expensive part of the process is, as Cliff pointed out, the human interaction of actually having to touch and tag documents. So being able to understand that the end goal is having to reduce the total number of documents that those expensive resources have to look at, that helps you have a guiding principal behind whatever strategy you end up developing.

Colby: Thanks. Hey, Wuk, I wonder what attributes you most consider the most important when evaluating technology? Something that can help in easing the pain.

Wuk: Well, I've evaluated a lot of them and scalability comes to mind. Can this solution not only meet my needs today, but can it meet my needs a year from now, five years from now? Taking time to learn new solutions, new software, is an incredible investment and so if you try to reduce the number of times that you'll have to eventually start from square one you will go a long way in terms of making your company, I think, more successful and more efficient. The other things I like to look for, does it aggregate information in intuitive ways that will allow people who are using this information to make decisions more quickly. And it doesn't need to be fancy. It doesn't need to have a lot of flash. If it can enable you to go after the low-hanging fruit, that is, in and of itself, a savings. You're not necessarily trying to find the needle in the haystack or the smoking gun within terabytes of data. I think a more efficient use of one's time would be to find the irrelevant data, which is sometimes more evident on itself, than something that may make or break the case. I try to look at information in ways that will help me identify those types of documents so that we can cull them out. Things like search terms and date-range filters can only go so far in sort of limiting the scope of ultimately what is presented for review. Those are the two things—scalability and the way it organizes, parses information and presents it to a layman, a person who doesn't understand some of the nuances of technology so that they can make decisions without having to learn the intricacies of IT. Because, as we all know, everybody, all these callers, technology makes dramatic changes on an almost daily basis and trying to keep up with that is not an ordinary task. Subsequently, I think, trying to understand the things that you do know in a clear and transparent fashion would be a better use of your time.

Colby: Wuk, it sounds like scale is important intelligence to help you quickly and rapidly cull through data to get rid of irrelevant stuff. And ease of use sounded like a pretty important thing there.

Wuk: Yes, ease of use and transparency, I think. You don't want to have to spend two or three days training a user on how to use the software. Being able to have them figure it out, I think, is the easiest way for them to retain it. And if you want to

achieve that, you really need a tool whose interface allows a person to develop understanding rather than have it dictated to them.

Cliff: Wuk said something that I want to highlight as an opportunity for the communication between the legal team and the technology team that we were talking about before, just to make it extremely concrete. When we talk about using technologies to cull out potentially non-responsive documents, the mechanisms for that are critically important and we can't necessarily always convince the legal team to cull things out. They may want to review everything. And we need to explain what it means to reprioritize documents, for example, and say, "We might not have to actually cull them out, we'll just put them over in this other bucket. We don't have to look at them first." Even that strategy can be extremely efficient as many matters settle before you get to that bucket of potentially irrelevant material.

Colby: Wow, that's a very interesting point. And that kind of speaks to a bit of the process. Cliff, you've got a lot of experience helping organizations put together process and your relationship to EDRM early on. I wonder, are there processes that folks can draw from? Are there standard practices that they might learn from?

Cliff: Well there are a lot of good organizations now. EDRM has continued to host a large volume of information about potential processes. And the Sedona Conference publishes great information on strategies that the legal teams often resonate with, and that's important. And just using standard project management processes can be incredibly effective to just make sure that the tasks are clear, the responsibilities are clear, the deadlines are clear and there's a project manager that's monitoring all of that so that the project can be measured. These are standard blocking and tackling techniques, but they work extremely well.

Colby: Thanks. So before I move to a summary here, I just wanted to remind everybody that there is the Q&A tab and if you have any questions, go ahead and post those questions. And while you're working on your questions, I'll ask the panel: We've covered quite a bit of information today; I mean, really a lot... And I wonder if you can each give us two or three top tips that you want the audience to walk away with. Let's start with Cliff.

Cliff: Well, I'm going to repeat the troika of make a plan, manage the scope and monitor the performance to the plan. But all of that is not useful if there isn't a specific person responsible for the plan. So my principle piece of advice would be for every eDiscovery project to make a specific person responsible for establishing and monitoring that plan.

Wuk: I just want to say a couple of things. One is define a linear process. Get it on paper and make sure that everybody understands that. But a second thing that I think is a little bit more holistic, for service bureaus in particular, is to think of yourself as a consultant and not a vendor. If you have that mindset, it allows you to present information and options to your client that they might not have been aware of, that could dramatically increase efficiency. So don't try to just do what you've been told, but really think outside the box and present options while you're doing the sort of request that's been handed to you.

Cliff: I'll just add that having a process is part of the strategy. If you were to follow a **Deming Circle** of plan, "do, check, act," you could apply that iteratively to your technology approaches as well. Every time you finish a project successfully or unsuccessfully, if you could take a look at a list of things that went well and didn't go well, either from a technology or a process standpoint, you could then continuously improve those processes as well. Maybe you need to expand on some piece of infrastructure, or maybe you need to examine some tool that wasn't nearly as successful as you thought it should have been and get improvements out of each step along the way, iteratively.

Colby: So plan is the universal thing here. Make a plan, have a process, and measure it along the way and continue to refine it. This is great.

Well, I appreciate that. I want to skip over to some questions that we're getting from the audience. And a reminder: If you have any questions, please post them to the Q&A section of the screen there.

Let me start with the first question: What warning signs should organizations and service bureaus look for? How do I know I'm likely to be in trouble?

Wuk: Sorry, Colby. Could you just repeat the question one more time?

Colby: What warning signs should organizations and service bureaus look for? Basically, how do we know we're going to be in trouble?

I think this gets back to the leading causes. What risk factors could you look for in your organization?

Cliff: I would just say you have to know thyself. You have to know the actual behavior in your organization. I've been in organizations where I ask the IT director about whether or not they have controls on the utilization of USB drives, you know, the little thumb drives that we sometimes carry around. And whether or not in this particular regulated-industry company they had locked down the USB ports on their

laptops. And that's a question that many people in this industry would ask. Rather than saying, "Yes, of course," he answered by pulling 16 of them out of his pocket and said, "You mean, like this?" So it is important for the legal team to understand and communicate in advance of a litigation event with the IT organization, so they understand what it means to have a controlled IT environment. So when it does come time to potentially, under some legal obligation, collect and process information, everybody knows what they've got their arms around. User communities don't like these limits, but for some organizations, their survival will depend on how these limits are implemented. If everybody understands why limits are in place, then I think some of these potential problems can be avoided. The warning signs for me are when that conversation isn't even happening, when legal and IT aren't having a conversation about what the scope of functionality might be and how it impacts what they'll have to do in the event they have to collect ESI to respond to a regulatory or legal matter.

Wuk: I think for service bureaus, measure your capacity. And if you can't, if you haven't, then that, in and of itself, is an issue. Measure your capacity and know what your capacity is and keep a close eye on it. If you're not doing that, then you're likely unprepared for the types of bursts that we've been discussing.

Mike: There's a test that I like to call an RFI check. If you're an organization, if you're not prepared to produce an RFI to solicit the eDiscovery processes from somebody...

Colby: Just real quick, an RFI being a request for information?

Mike: Or a proposal, a Request for Proposal, so an RFP. If you don't know what questions to ask yourself to properly get an eDiscovery situation handled as an organization, then you might be in trouble. And then alternatively, if you're a legal services provider or someone in the business of processing an RFI, if you look at the RFIs and the RFPs that are out there and you are not able to respond to some of the questions that are in them, that can be a warning sign as well. If you're not able to create an RFP or able to respond to an RFP in the space of, "I'm being sued, I need to farm out my discovery services to some organization that will be responsible for collecting this information," this can be a warning sign .

Colby: Thanks. There's another question here. I'll just read directly: How important are litigation support departments? A lot of law firms outsource the departments and how does that work for them? There might be... internal litigation support, if I could just guess what this is... internal litigation support for a firm or internal litigation support for an organization. Cliff, you might want to start with that. How important are litigation support departments for an organization?

Cliff: Right, so this is one of those questions about who's responsible for what in advance, and being clear about what that means. There is, over time, a migration of functionality between service providers and organizations that purchase services. And sometimes that line gets closer to the core of the corporation for certain functions; sometimes it gets farmed out more and is outsourced. It's a moving bar, where services exist. For litigation support, it's been both sides of that line and there are some large firms that regularly face litigation who have taken some of that early stage identification and collection and sometimes even processing and culling inside the firewall of the corporation. So that would be an internal to the corporation litigation support function. And for sophisticated litigants who are accustomed to the requirements, there are some dynamics around how it gets funded or who pays for it in the event you get sued, that come into play. Sometimes it makes more sense to have that outside the corporation. But the same dynamic happens for law firms. Law firms that are more regularly litigating the kinds of matters that require large volumes of electronically stored information to be processed and collected, or collected and processed, they've decided to have robust internal centers for not only what traditionally might be called litigation support, but also actually for processing electronic discovery data. That becomes a question of the trust, the responsibility; is it appropriate to be inside or not? And sometimes questions such as conflict of interest come into play and as long as the services are at a reasonable price point, I think it's an individual style choice for firms to decide if that's where they want to grow their expertise. Some firms have done that extremely well and other firms want to say that's not really where we have our expertise; we want to have it outside in the service provider space. So I don't think it's yet landed on a fine line that says lit support should be inside a corporation or outside a corporation or inside a law firm or outside a law firm. It's one of those things that's being decided based on the dynamics of goals of each one of those organizations.

Wuk: I think some of the corporations that have chosen to bring a lot of the lit support activities in house are doing so in an effort to rein in costs and understand where these costs are coming from. And you can find similar situations in law firms where vendors may be including hourly charges for things that they don't feel like they should incur. I think having a department in house gives you that type of control and transparency where you can direct your resources. In outsourcing, you lose that. I know some corporations that are involved in a lot of litigation are trying to bring that control in house and take it away from their outside counsel. That allows them to implement an enterprise-wide solution as opposed to having different outside counsel implement their own and deal with different rates. So it comes along with control: Is your firm or is your organization a frequent participant in investigations and litigations? If so I think that might be an indication that you want to try to bring some resources in house and develop that type of control and

develop and implement a system that you yourself are comfortable with. Because by outsourcing it, you are going to lose a lot of that transparency and control.

Cliff: Well, Wuk, you bring up the important words there: implement a system. It's not just a decision that people make. There needs to be systems that allow for that to be brought in house. You know, with Digital Reef sponsoring this seminar today, I think it's an opportune time to talk about the kinds of tools that Digital Reef is putting in place -tools that can be implemented in advance of litigation. You know, we're talking about them in the context of litigation support, but having a cross-server index of enterprise data that makes it a tool that might be used for identification and collection phase, as well as subsequent processing, is the trend that is happening in the industry. Tools will become more robust and those services will be possible inside corporations as that kind of a structure gets implemented over time.

Mike: I agree completely. Clearly, the realm of records management has started to move into the traditional realm of collection and ESI processing and vice versa. So there's definitely a sliding bar between cost and liability and organizations are trying to find the right balance. If they're willing to incur more costs because they're outsourcing the liability, then that's fine if that works for them. But if they're a serial litigator, they have a retail store that every time someone trips on a carpet, they get sued, maybe they want to bring some of those costs in house. And so they're sliding the cost bar down so that they can hold more closely the level of what is going outside an organization. Or a research organization might want to limit the access to any of the IP internally, for example. They might be more comfortable with having a robust collection capability with an internal check and balance review process in the records management realm than they would be with having someone come in and DD a bunch of scientists' laptops. So there's definitely an important role for litigation support, whether it be inside or outside the firm. And it's purely a question of cost and liability, and where you want to put those two values as to what makes sense, whether it would be inside or outside the firm. I don't think there's an easy answer as to whether one model versus another would be successful for any particular organization.

Colby: I'll just take advantage and say that this is not an easy thing at all and that's actually why the next webinar in our series is all about balancing in-house and outsourced eDiscovery resources. Hopefully you can join us on May 12 between 1 to 2 pm Eastern. You can register online at www.digitalreefinc.com because this is obviously a very interesting topic and we encourage you to join us.

I want to take also this time to thank today's panelists. I think it's been a great discussion. I really appreciate the time and insights that you've provided. With us



today has been Cliff Dutton, Wuk Kim, and Mike McClelland. Their contact information is shown on the screen. Gentlemen, thank you very much!

Cliff: Thank you very much

Colby: Absolute pleasure.

Wuk: Thanks.

Mike: Thank you for your time.

Colby: We will be posting this material on the Digital Reef, Inc. web site. You'll find it under "Resources." A copy of this presentation and the recording will be available within 24 to 48 hours. Thank you all very much for your time and we look forward to seeing you at our next session.