

# Leveraging Existing Resources in the Face of Growing Data and Rapidly- Changing Trends in eDiscovery

*Transcript of Brian McManus's speech at the Information Governance & eDiscovery Strategy Exchange in Washington, D.C., as prepared for delivery on Wednesday, 19 September 2012.*

Good evening everyone and welcome to the conference. I think I'm the only thing standing between you and dinner, including some enormous magnums of wine, a dangerous position in which to be for sure.

My name is Brian McManus, and I am the Managing Partner at Lighthouse eDiscovery. Three of my colleagues at Lighthouse are here today—Josh Stellick, co-founder of Lighthouse 17 years ago; Marc Eisner, a former attorney and currently a solutions engineer for Lighthouse, who has been involved in ediscovery since its inception; and Lynn Reilly, former attorney at K&L Gates and a lecturer on ediscovery at the University of Washington School of Law. My background is a little unusual—I'm a recovering lawyer, since I practiced law for 11 years until 1993, then used my MBA to move into the telecommunications industry, and ultimately ran companies or divisions of companies in telecom and internet services. I "retired" four years ago, and then "unretired" a little over a year ago to join Lighthouse.

Thank you on behalf of IQPC and Lighthouse for joining us this evening to kick off what promises to be an outstanding conference over the next couple of days. This is a great opportunity for all of us to check our practices against our peers, and to learn about the challenges and opportunities that lie ahead for the industry.

For those of you who are unfamiliar with Lighthouse, we are an ediscovery service provider with perhaps a slightly different focus than traditional ediscovery service providers. Our focus is on helping our mostly corporate clients reduce their overall ediscovery spend. We do this by using technology and practices to drive efficiencies throughout every stage of ediscovery. Ultimately, our solutions improve ediscovery, reduce the volume of documents humans review, and improve the efficiency of that review. We also align our financial interests with those of our clients by providing alternative fee arrangements.

With Lighthouse as tonight's dinner sponsor, I have the privilege of providing some food for thought before the real food—and the wine-drinking—begins. Hopefully, what I have to say won't cause you too much indigestion or cause you to consume too much wine. There is a lot of talk in our industry about the current and future trends in ediscovery: technology assisted review, cloud computing, cloud storage, social media, and so on are hot topics. In fact, the theme of this week's sessions is "what lies ahead."

I want to talk about something a little different—not what might be trendy or way forward-looking, but instead what is available to all of you, and is actually quite mundane—taking the people, processes, and tools you already have, or are easily and cheaply available, and utilizing them well. Our view is this—if you know how to leverage the people, processes, and tools that are already available—you will save a third on your ediscovery costs. One third. As a CEO, when I hear that I can save a third of my costs, I want to do a little happy dance—not very pretty, but



a joyful experience. I hope that message is music to your ears as well. Importantly, in addition to saving money, leveraging your existing resources in the ways I suggest will also help you build a strong foundation from which you can attack the issues that lie ahead in ediscovery.

## Leveraging People

First, I want to talk to you about leveraging your people. Getting the right people in charge of your ediscovery business is *critical*. This means aligning your people's strengths and passions with their responsibilities, like not sending the help desk guy to collect data from the CEO. An important consideration often overlooked is that leveraging people sometimes means bringing different talent to bear in your ediscovery organization.

I want to do a little audience participation, so I want you to be ready to raise your hands. For those of you in corporate or government legal departments, or in law firms, how many of you have dedicated software development engineers on your ediscovery teams? I mean 100% *dedicated*. For those of you that don't have dedicated engineers, how many borrow software engineers from other teams? So one person raised his hand on the first question and a handful raised them on the second. I'm here to tell the rest of you that software development engineers have massive potential to help reduce your ediscovery costs. This is what I mean in part when I say—"bring different talent to bear in your organization."

There are two reasons software engineers can have a big impact for you. First, software engineers automate manual processes. That's ... what ... they do. Most tools have API's to enable development. For example, one of the processing tools we've purchased at Lighthouse is incredibly fast at ripping through vast quantities of data. After processing, however, the tool has so many options that it requires an ediscovery expert to run. With this tool, which is great at what it does—loading, culling, and filtering—a technician has to complete 30 or so manual inputs and individual steps. Our engineering team created a Lighthouse user interface for this tool that allows us to drive standard processes without having to go through all

of those options. Of course, we can still go back to the standard user interface to utilize all of its advanced functionality, but, for most cases, we just want to push data through as quickly and efficiently as possible, with minimal potential for error. Our engineers *automated*, reducing a 30-step process to the click of a button. This decreased human time by 75%, which is a cost savings we have passed on to our clients; it also dramatically reduced errors and re-work, making us more profitable. By deploying software engineers smartly, you can do this same thing with many of the culling tools you have in house, saving you time and money.

Second, software engineers develop custom solutions for data. Again, this ... is ... what ... they do. In ediscovery, it is inevitable that a project will come along with a special set of requirements that won't be handled properly with existing processes and tools. I'll give you a recent example from Lighthouse. One of our clients consistently has a particular data type that is always subject to ediscovery but that is not supported by any commercially available ediscovery tool. When we first started doing production work for this client, working with this data type was a manual process, but our engineers have since automated it. Something that previously took hours or, with large volumes of data, even days of human time, now can be accomplished by the click of a button and minutes of computer time. I urge you to have your engineers look at developing custom solutions to help you solve recurring problems.

Here's a third example of bringing the right talent to bear in your organization. I was at a meeting earlier this week with one of the largest financial services firms in the world. The General Counsel says he thinks his ediscovery costs are out of control. That's normal, right? In their asset management group, they have 4 litigators. They have between 50 and 100 active cases, many of them large. Then we hear that the legal department has no paralegals or litigation support people. I think to myself, "That's weird." Instead, those people are in some group called Legal Operations—part of the IT department, not part of the legal department. Those Legal Operations folks engage the ediscovery service providers. They negotiate rates. I think, "ok, maybe this will work." But,



the Legal Operations folks don't review the bills. The four litigators review the bills. The litigators have no idea if the costs are reasonable or not. They admit this in the meeting. All they know is that the rates charged were consistent with the agreement, but they don't know if the *size of the bill* is reasonable for the work accomplished, because they haven't reviewed these types of bills before. So we ask, "Why don't the Legal Operations folks review the bills? Why aren't they tasked with increasing cull rates, and reducing volumes of data reviewed over time, and reducing costs per case?" You might laugh out there in the audience, but this is one of the largest financial services companies in the world, with lots of litigation, and lots of incentive to reduce the volume of data, but not the right people with the experience, the passion and the direction to accomplish what the General Counsel says is an important organizational goal.

I have two recommendations for you regarding bringing the right talent to bear on your ediscovery organization, one specific and one general: first, specifically, if you are considering bringing ediscovery technology in-house or have already done so, open headcount for engineers on your ediscovery teams and task them with automating processes and attacking complex data problems; or, if you outsource, work with ediscovery service providers who have engineers devoted to attacking your ediscovery costs; second, in general, make certain that you have the right people with the right direction focused on your most important ediscovery objectives. I suggest that many of you have the right people already somewhere in your organization, but they're not focused on the right objectives with the right direction. I urge you to fix that.

## Leveraging Process

In addition to leveraging your people in the right way, as we've just discussed, I encourage you to become *obsessed* with continuous process improvement. I know you're thinking—what could be more exciting than that! Just to show you how much fun this can be, I'm going to ask for more audience participation. Raise your hands if you think that most corporate and government legal departments, and most law

firms, have an end-to-end, *detailed*, process map for ediscovery processes? No one raised a hand? You are absolutely right—they don't! Or, if they do, the maps aren't well done and the organization has not taken all the steps I'm about to outline below. Please understand—you can do this with your existing resources, or readily available and not very expensive resources, and it will pay huge dividends.

So, first, create a process map! If you don't have the bandwidth or expertise to do with your internal people, hire an ediscovery process expert—think, Lighthouse!—as a consultant. Even if you need an outside resource to drive the process improvement, it is an inexpensive way to create really large savings.

Second, have the key stakeholders within your company contribute to the process map. Then, pour over the process map—critique each step and apply metrics about how long each sub-process takes—again, with all of the key stakeholders.

Third, focus ... on ... the bottlenecks—and there will be bottlenecks, there always are (and there will be new ones after you fix the old ones, hence the need for *continuous* improvement)—and identify three areas that cause you the most pain. If you fix those three areas, either through reinventing your processes or through automation, you will have a huge impact.

At Lighthouse, as part of our effort to reduce our clients' overall ediscovery spend, we set up regular meetings with our clients to discuss what's going on—eliciting areas where they want to see improvements from us and identifying areas where we think we can help them improve. A little over a year ago, we were having an annual review with one of our important clients, a litigation support group in a large technology organization. They asked us if we could create more efficiency around the handoff of data. We dove a bit deeper, and they explained that the Litigation Department had recently required the litigation support team to drive faster turn-around times for new ediscovery projects. We took decreased turn-around times as a guiding concept and identified a number of areas where we could help drive standards with the client, their review firms, and their outside counsel to increase speed. We also identified three areas where we could improve our own processes to increase speeds.



A year after implementing the changes, we met with the client and shared the impact of the changes as compared to the prior year. The data showed that we helped them not just meet, but substantially exceed their goals regarding turn-around time. Mission accomplished! People have told me that I look like Clint Eastwood, but I felt like Tom Cruise at the end of that meeting. If only I looked like Tom Cruise. Oh, and don't worry, I may look like Eastwood, but I'm not going to start talking to a chair up here, have no fear.

Something else happened when we substantially reduced turn-around times. This will be counter-intuitive to most if not all of you—we also *cut* their costs. Improving their processes and ours reduced our hours billed per project, and reduced their fees per project from outside counsel and outside review firms. In total, they reduced their spend per comparable project by 50% over the previous year! I can see there are skeptics in the audience. You're thinking, "Wait a minute; you want us to believe that you cut your hours billed per project, and you were happy about it? I don't buy it." You're right, I wasn't happy—I was *ecstatic*. There were two reasons for my elation: first, these improvements allowed us to handle more work with the same amount of people, increasing our profitability despite fewer hours being billed per project. Second, as you might imagine, we had a delighted customer. Now there's another client in the audience tonight, who I won't put on the spot, but who could also share with you that we reduced her costs of ediscovery by about 50% year-over-year, by doing the same thing—leveraging great people and process improvement to create huge benefits. Maybe she'll share with you during the course of the conference.

As this example indicates, it's not enough to stop at great internal processes. Hire ediscovery service providers and law firms that are as dedicated to continuous process improvement as you are—or as you are going to become after this talk! Once you've done that, find a way to get your internal teams working closely with the teams at your service providers and law firms. The efficiencies that arise from these tight-knit teams are what really drive down costs *and* improve efficiencies. There's an important side benefit to note for you—you will create a *culture*

of continuous improvement, which will help you keep great people on your team, and help you attract more great people to your team.

## Leveraging Tools

We've talked about leveraging your existing people and leveraging process improvement, both of which are inexpensive ways to make dramatic improvements. A third way to make dramatic improvement is to leverage the tools you already have.

We don't sell in-house tools, so I don't have a dog in this hunt. But I am amazed at how few companies and agencies get further embedded with the software company once they've purchased that company's in-house tool. All of you in this room work for companies or agencies with enormous buying power and name recognition. Use that power to get a seat at the table and drive the product roadmap of your ediscovery tools to your advantage. If you've made the decision not to in-source any ediscovery tools, make sure you work with service providers that stay involved with the development of tools in the industry.

Moreover, consider how to leverage new functionality as it comes out in your existing tools. For example, Lighthouse has been selected to work with Microsoft on a new product called the eDiscovery Center that is part of the new Microsoft 365. We have been providing general feedback as well as approving the new export format.

The eDiscovery Center is a SharePoint-based portal that interacts with data in Exchange, SharePoint, and in other network locations. It allows you to perform searches and other functionality similar to that of many traditional ediscovery tools, except that ... the data ... never ... moves: you will be able to specify what mailboxes or data sources you want to search, and then you can apply date filtering, complex Boolean searching, and some deduplication, all against data that is in place—and all behind the corporate firewall. This tool is also built for the cloud, as part of Microsoft 365.

Tools and functionality such as the eDiscovery Center have the potential to change our industry by allowing



you to leverage the infrastructure you already have or already plan to put in place (like a cloud infrastructure), creating dramatic savings.

I'm sure most of you use Microsoft's enterprise products. Reach out to your account representative to understand more about the new eDiscovery Center. You might be able to leverage it in the future as part of your ediscovery toolset. Also, find an ediscovery service provider that can interact with the new format.

## Conclusion

As I said before, the theme of today's sessions was "what lies ahead." There is a lot lying ahead of us for sure. I'm just as excited as the rest of you about technology assisted review, ediscovery in the cloud, social media, and so on. But, like you, I'm a little distracted by the thought of food and wine, so let's wrap it up.

Here's the wrap-up. While we look ahead, let's also remember to leverage what we've got. Focus on the big three: people, processes, and tools.

One, deploy your people strategically and focus on automation and repeatability. Make sure you use engineers to solve problems—that's what they do—and otherwise have the right people with the right direction on your important objectives.

Two, become absolutely dedicated to the *fun* of continuous process improvement, get intimately familiar with your three biggest bottlenecks, and eliminate those bottlenecks.

Three, get the most out of the tools you have, use your software vendor to help you do that, and drive the product roadmap of your tools to work best for you. Also, be ready for new functionality like the Microsoft eDiscovery Center for those of you using Exchange and SharePoint—we think it will be a game-changer by further leveraging your basic infrastructure and eliminating the need for supplemental infrastructure.

Importantly, if you do these things, not only will you make a huge impact leveraging your existing resources, you will build a strong foundation to address the new trends in ediscovery, you will save a lot of money and create a lot of efficiencies along the way, and you will inspire your people to find other areas of improvement—and, dare I say it—even more cost savings and efficiencies? We've consistently helped our clients save at least a third on their ediscovery costs year over year. You can do the same thing in your own organization, with the right level of commitment to leveraging your existing resources.

One last thing: you know, when the ediscovery industry started just a few short years ago, Bob Hope was alive, Steve Jobs was alive, and Johnny Cash was alive; today, we have no Cash, no Jobs, and no Hope—but, if you employ these simple principles I've outlined above, maybe we can bring cash, jobs and hope back to the ediscovery industry!

Thanks again from Lighthouse eDiscovery for joining us for dinner tonight, and I hope you all enjoy the conference.

## About Lighthouse

For 25 years, Lighthouse has provided innovative software and services to manage the increasingly complex landscape of enterprise data for compliance and legal teams. Lighthouse leads by developing proprietary technology that integrates with industry-leading third-party software, automating workflows, and creating an easy-to-use, end-to-end platform. Lighthouse also delivers unique proprietary applications and advisory services that are highly valuable for large, complex matters, and a new SaaS platform designed for in-house teams. Whether reacting to incidents like litigation or governmental investigations, or designing programs to proactively minimize the potential for future incidents, Lighthouse partners with multinational industry leaders, top global law firms, and the world's leading software provider as a channel partner.

Connect with us to see how Lighthouse can best support you.

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