

## Help for Disgruntled Associates

Here's a way to combat attrition: Improve the deadly job of searching through electronic data.

BY STEPHEN D. WHETSTONE  
AND MICHAEL S. SIMON

Associate attrition at top U.S. law firms has reached critical levels. According to a recent survey by the National Association for Law Placement, 78 percent of associates leave their firms by the end of their fifth year. *The Wall Street Journal* reported last year that 37 percent of associates leave their firm by the end of their third year, which is even more troubling because studies suggest that associates are just becoming profitable to firms after three years.

Experts conclude that a third-year associate who leaves costs a firm nearly \$300,000 to replace, as a result of lost productivity, recruiting fees and other hiring expenses, and training costs for the new hires. Experts claim that thinned-out associate ranks force partners to pinch-hit on projects beneath their skill level and tarnish the luster on the brass ring that remaining associates covet.

The past industry response to significant associate departures has been to raise salaries, which at the largest law firms have more than doubled since the mid-1990s. But constant associate raises have not stemmed the tide. Attorneys report that frequently embedded in the raises is an expectation (often unstated) that associates must work longer hours, which can lead to further job dissatisfaction. Now, law students are starting to take note of the deteriorating quality of life even before they arrive at these firms. For example, a group of 125 law students from the nation's top law schools recently posted a "manifesto" on the Internet, demanding changes to law firm practice—in return for which they have committed to taking less money.

Firms that do not increase their billable-hour quota are often compelled to raise their hourly rates in order to maintain profit margins. Not surprisingly, many clients have taken a dim view of these associate raises and rate increases. In a survey by Altman Weil of general counsel from the top 200 law departments, the majority of the respondents call the recent salary increases "outrageous."

Generation Y associates seem to have an especially low tolerance for less challenging assignments, particularly document review. A search of the Internet finds the following posts on blogs, law student forums, and message boards:

- "Document review, which every young BIGLAW associate will do at some point, is the deadliest boring thing about being a lawyer."
- "I'm performing dull tasks that I could have done in college, after 4 months employment. . . . I desire to actually practice law, not sit at a desk all day and review/summarize documents for a living"
- "When assigned to do document review, you are deposited into a gigantic conference room kept at an uncomfortably cold temperature and left alone with a hundred or so boxes of documents piled up to the ceiling. With no real knowledge of the background of the case. And with instructions to go through all of the documents keeping an eye out for 'anything that looks funny.'"

Massive document reviews lasting many months or even years are no longer unusual—and for many associates they are a painful rite of passage or impetus to leave a firm. This disturbing trend is likely to get worse unless firms figure out how to make document review projects less tedious and less protracted. But with the continued explosion in volumes of electronic data and recent changes to the Federal Rules of Civil Procedure that establish that such data are fair game in discovery, firms cannot meet this new challenge using tired tools and mediocre methods.

To put the electronic data explosion in context, a single gigabyte of e-mail, Microsoft Word, or Microsoft Excel files equals approximately 75,000 to 100,000 pages, or about 40 banker's boxes, of printed documents. A typical corporate e-mail user gen-



erates approximately four gigabytes (or 160 boxes) of data in just one year, according to the Radicati Group, a technology market research firm. A single computer backup tape can hold up to 100 gigabytes of data (or 4,000 boxes of printed data).

Many companies routinely generate and store dozens, if not hundreds, of backup tapes a year—and some Fortune 500 companies have reported storing tens of thousands of tapes. The *Chicago Tribune* reported that one lawyer at a Fortune 100 company estimated that the corporation stored 800 terabytes of information on 121,000 backup tapes. In 1990, it cost \$20,000 to store a single gigabyte of data; today, it costs just \$1. With storage costs so low, the corporate compulsion to save everything seems to trump concerns over how to review it.

In this environment, traditional linear manual review—which starts at box one, folder one, document one and crawls along to the last document in the last folder in the last box, in search of privilege, relevancy, and perhaps “anything that looks funny”—no longer works. With manual review, a “small” 10-gigabyte matter would take 5,000 billable hours to complete at an average cost of \$1 million, assuming that associates at a \$200-per-hour billing rate can review 30 documents an hour. A 100-gigabyte project—roughly the amount of data typically stored by 25 employees—could take 50,000 hours and cost \$10 million! No wonder attorney document review represents anywhere between 58 percent and 90 percent of total litigation costs.

Of course, clients retain lawyers not only to muck through documents as fast as possible, but also to learn the facts, analyze their impact on the claims and defenses at issue, and plot litigation strategy. These ultimate objectives are hard to achieve, however, when they are confronting huge volumes of data, looming discovery deadlines, and an overwhelmed review team—just getting through the data can seem like victory enough. New FRCP 16(b) and 26(f) require much more than that, however. In the first several weeks of a matter, litigators must now learn about their clients’ data systems and likely sources of relevant information and lock them down. Thus, even if a firm can cram a sufficient number of associates into the “gigantic conference room” for document review, those associates will be hard-pressed to quickly provide partners with the information they need.

### **ADVANCED REVIEW TECHNOLOGY**

Still, there is hope. Document review technology has improved significantly in the past few years. New software systems can rapidly process and analyze huge volumes of data (both file content and hidden “metadata”) to reveal patterns and relationships across massive document collections. For example, some systems can compare each document in a collection (whether e-mail, Word files, spreadsheets, engineering schematics, or a combination of multiple formats) against all other documents in that same collection, and then automatically group them if identical, similar, or related in subject matter. This “concept organization” technology transforms organizing a large document collection from a mundane task that would take months or years for humans to complete to one that a computer can complete in a matter of days.

The end result? Copies of documents appear in virtual computer folders, which are labeled and organized alphabetically by subject matter. So, rather than start with disorganized stacks of unrelated documents, associates can now assign and review them in an organized manner.

Not only do such systems allow document review to go faster so associates can focus on work they consider more interesting, challenging, and rewarding, but they also save clients huge sums of money in unnecessary review by driving down the number of hours attorneys would otherwise spend plodding through mountains of data. Reported review rates for trained users on these advanced systems routinely reach 300-500 documents per hour and can exceed, in bursts, 1,000 documents per hour.

Privilege review—another long-standing source of associate dissatisfaction—used to require manually slogging through all documents (and nervously checking and rechecking to make sure nothing fell through the cracks), affixing red stickers, and then transcribing information about the withheld documents’ authors, recipients, dates, bases for withholding, and document descriptions onto logs. Now, new review systems allow associates to automate much of this process, significantly reduce the risk of inadvertent production, and similarly accelerate this tiresome process.

Of course, speed cannot come at the sacrifice of quality. Advanced review systems, however, not only maintain quality but also dramatically improve it by allowing associates to review documents in context—so when reviewing a document, an attorney can summon the tool to display all other identical, nearly identical, and related documents, so consistent action is always taken upon them all.

By contrast, associates still stuck using traditional approaches are forced to shift gears to try to understand documents on a wide range of topics, and different associates often separately review iterations of the same document and mistakenly reach conflicting conclusions about relevance, privilege, confidentiality, and so on. In fact, according to one study, lawyers miss nearly as many relevant documents as they find when they conduct pure manual review. Even automated keyword or Boolean searches cannot guarantee better results. In another study, lawyers found less than 25 percent of the relevant data when they relied solely on machine search.

Unlike law firm partners, Gen Y associates grew up using e-mail, cell phones and text messaging, and instant messaging. They routinely replace stale technologies in their personal lives. It stands to reason that those same associates expect their law firms to adopt new technologies that will help improve their professional lives, and firms that fail to heed the clear warning signs pointing to mounting associate frustration risk losing more associates and their competitive edge.

Even beyond winning back disgruntled associates, advanced systems can also benefit partners and clients alike by maintaining continuity on matter staffing and significantly driving down escalating discovery costs. Many partners long ago abandoned any notions of looking at case documents early in a matter because they could not justify the costs of wading through haystacks at their high hourly rates. Instead, they reluctantly resorted to waiting and relying on associates to unearth critical documents before turning to the key facts in the case.

Both the partner and client lose something in this financial trade-off. And under the new rules, courts are likely to expect partners to be more familiar with their clients' data and information systems than they are accustomed to. Concept organization technologies can help partners meet this new challenge by automatically grouping documents into subject matter sets and allowing partners to quickly zero in on the documents that matter most.

Improving the working lives of associates by using better, more efficient technology works for everyone. Associates win when document reviews are less tedious and time-consuming. Partners win by keeping associates happy—and employed at

their firm—and by getting closer to their matters, particularly earlier on. Clients win by saving huge sums of money otherwise wasted on inefficient document review.

Although advanced electronic discovery review systems, by themselves, cannot completely stem the flow of associate attrition, they can offer immediate relief to associates assigned to the most challenging matters and send a signal to all associates that a firm understands what it takes to thrive in the 21st century.

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*Stephen D. Whetstone is vice president and Michael S. Simon is legal associate for Stratify Inc., an e-discovery services provider. To contact them, visit [www.stratify.com](http://www.stratify.com).*