Five Steps for Effective Oversight and Control of E-Discovery Spend

And How to Turn E-Discovery Into a Business Process
Gone are the days when corporate law departments could fly under the radar, operating outside of budgets (or without budgets) because litigation was deemed too capricious and unpredictable to effectively manage like other business units within the company.

Today’s corporate law department is expected to run like any other high-performing business department: on budget, with measurable results. In-house counsel and e-discovery teams, increasingly led by legal operations professionals, thus need to learn how to accommodate and work within shrinking budgets, controlling costs without sacrificing outcomes.

In this ebook, we present and discuss five key steps that high-performing, efficient law departments take to control discovery costs and develop—and then stick to—workable budgets, making discovery a repeatable, predictable business process.

Thankfully, technology is evolving to meet our needs. With a few best practices, well-chosen tools and experts to help you improve productivity using technology, you can maximize the bang for your discovery buck.

These technological advancements come not a moment too soon: Improving discovery processes, without increasing costs, is more urgent than ever. In the past 20 years, we’ve seen an explosion of content and data sources. Cases that once involved a manageable 30,000 documents routinely encompass 3 million documents. (How can anyone collect, manage or review that much data in a cost-effective, timely manner?) Yet the pressing time demands of investigations and “rocket docket” discovery cases haven’t let up.

*That’s why we never stop looking for ways to improve the discovery process (and outcomes) and reduce costs.*
Start with Strong Foundations

We start by establishing the core foundations and themes that we’ll rely on to control costs and build successful discovery budgets: Focus on legal operations as a business process, know your people and know your data. Your budgeting success depends on how well you’re applying and supporting these themes. We also touch on proportionality as a reminder that “perfect” discovery is an unattainable myth, the pursuit of which can bleed a budget dry.

Next, we’ll cover the five practical steps that can help keep your discovery budget on track. These strategies are arranged from left to right on the Electronic Discovery Reference Model (EDRM):

- Hold & Collect Wisely
- Manage Discovery Centrally
- Develop Repeatable Processes
- Reduce Review Volumes & Accelerate Review with TAR 2.0
- Leverage Business Intelligence for Better Decision-Making

By the end of this book, you’ll have actionable, concrete ways to limit discovery spend while gaining greater insight into your data, cases and processes.

Foundations & Themes

Three themes underlie our steps: A successful, budget-minded legal department should focus on legal operations as a business unit, know its people and know its data. Together, these form the underpinnings for effective oversight and management of discovery.

Note the bidirectional relationship between these foundational themes and the steps. These themes emerge from the application of the five steps, yet they simultaneously support implementation of the steps. When in doubt as to how to improve your discovery budgeting and cost-control measures, look for the interstices between these themes and the steps as they apply to your business.
Understand the Role of Legal Operations

We thought this was the year of legal operations, but the next few years will strenuously vie for the title. The Corporate Legal Operations Consortium (CLOC) launched its annual conference just a few years ago with a modest participation. Attendance doubled in the CLOC Institute’s second year, doubled again in 2018 and has shown no sign of hitting an inflection point.

CLOC’s initiatives reflect the growing notion that we need to bring business expertise to legal departments. Of course, legal operations are about more than spend, but the most pressing need, and thus the most attention, is for budget management.

Legal operations require a holistic approach, treating all of legal functions—and all of a company’s offices, wherever they may be in the world—as interrelated components of a whole. That means that instead of pigeonholing every iota into a different box or category with a distinct toolkit, it makes sense to work with fewer vendors that can each provide a broader range of technology and/or services.

In short, the focus on legal operations ties in to the question of how to develop effective strategies for reducing legal spend on discovery. But operations involve people and you need to know who they are.

![Graph showing litigation metrics from a CLOC Member Survey, March 2018](image-url)
Know Your People

You can't manage a budget if you don't know the people working within (or affected by) that budget. What exactly do they do for the company? What types of data do they generate, manage, retain or archive? How well do they understand discovery and their roles and obligations? How well do they comply with those obligations and communicate about their concerns?

You need to know all the different sectors of your business and understand how each department uses data. This knowledge enables you to reduce spend, adjust operations and create policies that will make your business stronger and more cost effective.

“Requests are becoming more burdensome—they're broader and encompass more sources of data. In-house counsel are in the position to untie the knot and see where there is overlap and what's really necessary. That translates into a reduction in scope.”

- Sharyn Procaccio
VP and Assistant General Counsel, Hunt Companies
(Opinion stated is Sharyn's and not that of her company)

It's incumbent on legal operations leaders to understand, in depth and in detail, the business operations of the entire company. That means conferencing with all the different business unit leaders, interviewing custodians and figuring out what the business needs to collect for a potential litigation or investigation matter. It's really the only way to untangle the discovery knot, determining where there's overlap in data requests and what's genuinely necessary.

The better you know your people, the better you can define and reduce your scope—without losing valuable discoverable data—and the more efficient you can be. Of course, part of the reason you need to know your people is so you can understand your data.
Know Your Data

It’s no secret: Data management represents a pain point for most businesses. Data maps are terrific if you have them, but developing them, and then keeping them up to date, can be a Sisyphean task. And data mapping isn’t everything. Knowing your data is a combination of smart data management (understanding and making the most of the data you have) and metrics (capturing specific performance measurements about your data that explain trends in discovery spending).

Data management demands not just knowing where your data is but also what that data means. The way to build that knowledge is to do a post-mortem analysis on every case, every time. Within each subject area you deal with, whether it’s labor grievances, patent or trademark issues or business issues such as contractual compliance, you’ll want to revisit each matter at its conclusion in light of your other related matters. For example, maintain custodian profiles for each matter, so you’re not reinventing the wheel with each new case, while simultaneously assessing your metrics for each case to see whether you’re hitting your targets.

Based on that knowledge, start a conversation with outside counsel about what custodian and non-custodian data you really need to collect. When your argument for limiting the scope of discovery is based on hard data from numerous prior matters, you can identify ways to reduce your spend overall without losing any important data.

Bear in mind that knowing your data also means building a partnership with your IT department and the vendors that are supporting your applications. Don’t wait until you’re in urgent need of data or information to open that discussion. Start building the relationships and gaining the knowledge you need to be an effective liaison between IT and outside counsel as soon as possible.

“Metrics are key in planning your litigation. Know where your data exists so you can make the argument against over collection using those metrics.”

-TracyAnn Eggen
E-Discovery Specialist
Dignity Health
Key to limiting your discovery spend and controlling your budget is an understanding of what discovery encompasses under today’s rules. Ever since the December 2015 amendments to the Federal Rules of Civil Procedure, the emphasis of discovery has shifted. Today, the biggest problem isn't recognizing helpful or relevant or even dispositive information—it's finding that information within the morass of millions of unhelpful, irrelevant and meaningless documents. That's why we now think of discovery with a modifier: Everything we're doing should be about proportional discovery.

Rule 26(b)(1) redefined the scope of discovery to include “any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case.” Proportionality is explained via six factors:

- The importance of the issues at stake in the action
- The amount in controversy
- The parties’ relative access to relevant information
- The parties’ resources
- The importance of the discovery in resolving the issues
- Whether the burden or expense of the proposed discovery outweighs its likely benefit.

Balance is the key here. In our world of connected devices, there will always be too much data. The critical question, then, is how much data is proportional to the needs and demands of each individual case. Keep the limit of proportionality top of mind at all times. Every time you consider a request for access to data or access to personnel, evaluate whether what you’re seeking, or what an opponent is seeking, is proportional to the matter. The most effective and least painful way to limit your discovery spend is to limit the amount you spend on nonproportional information; conversely, the best way to blow your budget is to fruitlessly pursue “perfect” discovery.

With that caution, let’s turn to the five steps that will help you put these foundations in place and produce proportional discovery within your budget.
STEP 1
Hold & Collect Wisely
Legal holds arise from the duty to preserve information from pending or reasonably anticipated litigation. In practice, many legal departments still issue holds via email and track them using spreadsheets—a time-consuming, risky and expensive “one off” way to manage holds.

Litigation typically begins with a hold notice and then continues with communications, collection and preservation for the anticipated litigation. As the number and complexity of holds increases, however, relying on email and memory becomes increasingly dangerous, particularly when those managing holds moved on to other jobs or left the company. Sanctions for failure to properly preserve evidence are increasing in severity and number.

Implementing holds manually—or in a one-off manner—can blow your budget before you even get beyond the first stage of discovery. Many legal departments still use a traditional workflow in which you might have outside counsel conducting in-person interviews of your custodians to identify potentially relevant data sources. Then you might hire a forensic collection vendor to collect subject data, and a specialized e-discovery vendor to process the data and load it for review. In this traditional cost model, legal holds and collection alone can reach upwards of $500,000 per matter (not to mention the disruption to employee productivity).
Automating Legal Hold & Collection with Mature Technology

Fortunately, automated legal hold and collection technology like Catalyst's Insight Legal Hold & Collect simplifies these processes within a single cost-effective system. By automating legal hold and collection into your process, you'll reduce errors, risk and time, and adhere to a defensible process. Furthermore, with mature legal hold technology, you can increase the speed with which you can access critical documents, rather than waiting days or weeks.

Here's how automated legal hold technology works:

1. **Legal hold management**

   Start by sending and tracking notifications and setting automated reminders for custodians and data stewards. Hold notices should be written in clear language that is comprehensible to the layperson. Aim for plain language and clear directives in your hold notices and provide an easy way for employees to ask questions or seek clarification when they need it.

   Automated legal hold software will allow you to track your custodians' responses to holds, ensuring that you obtain timely acknowledgment of every hold and a statement of compliance with it, and automatically generate periodic reminders to ensure that custodians remember their obligations even when other holds are released.

   Where responses are slow or nonexistent, you can create individualized escalations. You might suspend an unresponsive employee's access to the computer system until the hold is acknowledged. Alternatively, consider deploying a training video that the employee must watch before regaining access to the system.

Do you think automated hold systems are too costly or you don't have enough litigation to justify the expense?

Before you dismiss the notion, evaluate your full preservation costs across all of your cases:

- How much time are your people spending tracking compliance and following up with noncompliant custodians?
- How often are your preservation efforts challenged, and how long does it take to do a full audit of your process?
- How much time do you spend explaining your preservation process to custodians, data stewards, IT professionals and your outside counsel?
- How many times (and at what cost) are you reinventing the wheel for hold and collection activities related to “frequent flyers” custodians?
- What are you spending, per matter, on outside counsel interviews of custodians?

An automated system requires minimal upfront time to integrate with your company's email, HR systems and other data stores, but thereafter your hold notices, and your audit trails, can be on auto-pilot. The long-term cost savings can be surprising.
2 **IT system integration**

Automated legal hold software can be integrated with internal email and HR systems to select custodians from different departments or locations.

Connecting with internal email and HR systems allows legal hold administrators to select custodians from different departments or locations. Being able to see that an employee has departed by integration with HR systems is one way to see if that former employee's data, including his or her drives, need to be preserved and collected.

3 **Employee questionnaires**

Notify and survey key employees to gather important information and identify relevant data sources and documents. Lock in your critical stakeholders first, then phase your discovery effort from there as needed. Questionnaires help determine exactly how important custodians manage data. Do they have files on a hard drive? Have they strayed from your expected data map? Do they have issues with the accessibility of their data? Questionnaires are the quickest and most cost-effective way to glean these answers and can be customized with pre-drafted templates.

This part of the process falls within the context of knowing your people. Here, it's equally important that your people know you and know about how discovery works. While you want to be able to quickly identify your key custodians and data stewards, you also want those employees to have a working knowledge of the legal hold process so that they understand their duty to preserve potentially relevant documents.

4 **Connect-or-collect**

At the simplest level, you may be able to preserve in place once a hold has been issued—thus avoiding the need to collect. With the data you gather from questionnaires, you can understand the extent and volume of potentially relevant and proportional discovery before you ever start collection. This allows you to better plan for and control the scope and cost of your effort.

When gathering data is necessary, the right tool can integrate directly with existing systems to collect data, or enable you to directly gather potentially relevant data from custodians anywhere in the world or directly from enterprise mail, drives or storage networks.
Bear in mind that preservation is the stage at which discovery failures can be expensive to fix. And those failures can be terminal to your case if they’re egregious. Fortunately, you don’t have to rely solely on custodians: You can instantly suspend any deletion practices that are in effect, preventing many types of spoliation from the moment you issue notice of a potential matter.

### Promote or preserve

Documents can be preserved in place or in a low-cost repository, and promoted to review with direct integration with review platforms (such as Catalyst’s Insight Discovery platform). Legal teams can start reviewing documents while other data is still being collected.

### Defensibility

You can use the data your automated legal hold system generates to create a comprehensive, defensible audit trail detailing your every step in mere seconds.

Remember your people: Ultimately, the hold and collection process can be disruptive to custodians. Take care to time your efforts to fit the needs of your employees and minimize business interruption. Many collection tools can operate in the background without disrupting employees while they work. It’s helpful to have someone in the legal department with some IT mastery or at least enough experience to speak both “languages.” Ideally, legal and IT can work together to understand each group’s pain points and respective roles and responsibilities. Bridge the gaps between legal and IT by setting up a working group that meets regularly to promote the best interests of your company.

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**Pairing Automated Legal Hold with Microsoft Office 365**

O365 enterprise licenses are one area to shave costs, especially for organizations using higher-tier and higher cost E3 or E5 O365 Security & Compliance Center licenses. If an organization combines mature legal hold and collection software with lower-tier O365 licenses, it can realize significant savings. Take the example of a 1,000-employee organization below.

**Without Legal Hold Automation:**

Only E3 and E5 licenses offer legal hold support. At a per user license cost of $420/employee/year, the organization would pay $420,000 total just to ensure its corporate data is properly archived.

**With Legal Hold Automation:**

You can downgrade from E5 to E3 licenses across all of user accounts (at $240/user/year that’s an annual cost of $240,000). Pair that with an automated legal hold tool at around $20,000/year, and the cost savings quickly add up.

Cost savings are not the only benefit. At the same time, legal and IT departments can use more advanced legal hold, preservation and reporting features to streamline processes that would otherwise be manual. This helps ensure synchronization between IT and legal, deliver employee-facing and legal administrator workflows, and collect and preserve data from a wide range of data sources, not just Exchange and supported O365 applications.
STEP 2
Manage Discovery Centrally
As one of our foundations, we discussed the holistic viewpoint of legal operations, where you look at the overall needs of your organization and use integrated approaches instead of specialized narrow applications and disparate processes to solve problems. This approach is equally valuable when it comes to managing your discovery data.

Traditionally, corporate legal departments have managed their portfolios in silos—sending data to multiple vendors and law firms, perhaps by area of expertise or to balance workloads across teams. Under this model, documents are collected, processed, loaded into a review platform and reviewed for a single matter—even when many of these documents, such as common technical documents related to one patent infringement suit, are likely to be relevant where that patent has been alleged in another matter. Once the case is complete, the documents, coding and work product—including the costly review of privileged documents by outside counsel—is dispositioned and human judgments are lost for the next “like” case.

Thus, when working in silos, you miss the opportunity to review once and produce many times; documents that frequently come up in litigation need to be collected and preprocessed, re-reviewed and reproduced each time. Instead of viewing each case or each data point individually, which is inefficient and costly, use a multi-matter management system with a core document repository and data warehouse (holding “data about the data”) for reuse across future cases.
With a multi-matter management system with a data repository, each new matter creates greater efficiency because data is collected and processed just once. When new matters arise, documents can be assigned from the data repository to a new matter without needing to collect or process the same data (additional costs), and prior coding can be pre-populated (greater efficiencies). That is, coding decisions or “tags” such as privilege, confidentiality and other designations are retained for use across multiple cases. Documents can then be efficiently reproduced across matters, allowing for a “review once, produce many times” workflow for commonly produced records.

A central data warehouse provides a holding area for data about frequent flyer custodians and data sources, along with sensitive documents such as privilege, trade secret, financial information, personally identifiable information and protected health information. The data (and documents) can then be applied to each new matter as needed, without incurring repeat costs.

Centralizing case data and documents offers the following primary advantages over the traditional data silo model.

1. **Collect, process and load once.**

   A centralized model allows you to collect, process and load documents to a core repository once from which they can be assigned to individual matters, avoiding unnecessary repeat fees with each new matter. More sophisticated systems integrate legal hold and collection functionality for efficient data flow, which allows you to understand custodian and non-custodian data from legal hold through production.

2. **Propagate coding decisions within individual matters.**

   Legal teams can reuse valuable attorney work product—coding decisions from prior matters—in support of matters that arise later on. While relevance coding may vary from case to case, issues like privilege, privacy and proprietary information generally are retained and reused across cases. Keeping that reviewed data in a repository with its tags intact allows you to shortcut that portion of review in the next matter, saving on the most expensive stage of discovery. Produce documents efficiently across matters.
Review once, produce as many times as needed.

You also can reuse entire documents produced in a prior matter without further review. This opportunity often arises with common business documents and in intellectual property disputes, for example, in which the same core components or drug compounds are alleged across matters. The technical documents can often be reviewed and categorized once, and assigned to as many matters as needed at no additional effort or cost, enabling rapid response and supporting a strategic advantage especially when large sums are at stake.

Reduce risk.

Centralization also means less risk. First, there are fewer coding mistakes across documents, driven by consistent process and work-product from prior cases. Second, centralization reduces the risk of inadvertent production of sensitive material. Third, it helps keep your data secure by allowing in-house teams to control access and limit the flow of sensitive information across disparate law firm and vendor databases.

Report across matters for better decision-making.

Finally, data centralization is a key component of enhanced and cross-mater reporting across enterprise custodians, collections, deadlines, review metrics and related legal spend—all necessary for daily management and strategic planning. We’ll explore this more when we discuss metrics in Step 5.

Centralization is more than just a multi-matter management system. It is about taking control of your entire e-discovery process, understanding the rules governing proportionality, and streamlining your systems and processes to cost-effectively manage your legal data.

The Cost-Savings and Process Repeatability of a Data Warehouse

Say your organization, a large pharmaceutical company, has 10,000 R&D documents related to a core compound used in multiple drugs. Over time, 50 lawsuits have hit relating to each drug.

Under a traditional model, assuming it costs $1 to review one document, you would spend $500,000 just on the review. This doesn’t include the additional costs of interviewing the same custodians again, collecting and processing the same documents and loading them to a review platform over and over again, or the immeasurable costs associated with risk of inadvertent production of sensitive material.

In a centralized model using a multi-matter management platform with a data repository, these same documents are reviewed and coded once—costing $10,000 and saving $490,000.
STEP 3

Develop Repeatable Processes
Whether you manage your data internally or work with a partner, standardizing your workflows and leveraging technology around a central data repository can help you gain control over your data and ensure consistency across all cases.

It simultaneously eliminates redundant efforts and establishes efficiency-promoting best practices. Together, that adds up to considerable savings. Note that this is a two-part step and both parts are critical.

1. First, you’ll want to develop a standardized approach to discovery. Evaluate the impact of your current processes and tools and investigate best practices that you can integrate into your approach. Memorialize these standards in a corporate playbook that ensures consistent application and supports process defensibility.

2. Second, to take full advantage of every opportunity to control your discovery costs, you must also regularly evaluate and optimize your techniques as discovery technology—and your understanding and use of it—evolves. Beware the tendency in discovery to “set it and forget it.” All too often, a legal team will go through the first part of this exercise, establishing a solid playbook that accommodates its needs. It then ignores opportunities for iterative improvements, assuming that yesterday’s best practice is still viable. Meanwhile, it’s missing out on the value afforded by regular process evaluation and optimization. Don’t let the simplicity and obviousness of this strategy cause you to overlook it: The world won’t stand still, and neither can your discovery playbook.
The Discovery Playbook

A well-thought-out playbook should cover the entire discovery process, from data preservation and collection formats and labeling to processing, loading and reviewing data. Determine what types of searches you’ll use, when you’ll run searches, how you’ll organize data review workflow and the respective roles and pass-off points for internal reviewers, managed review teams and outside counsel, and how you’ll produce data. Develop overarching best practices and build them into your processes.

Don’t mistake this thoroughness for complexity; the last thing you want to do is to “overlawyer” your process playbook. Much as you did with legal hold templates, focus on writing a document that works organization-wide. After all, if you need everyone to comply with a policy, you have to write a policy that everyone can read and understand. Put together plain-language policies that are clear, concise and usable by your entire team—in-house counsel and e-discovery professionals, your vendors and outside counsel. Simple policies that people can follow are preferable to complex and theoretically complete but unreadable tomes. If possible, incorporate a diagram describing the process and clarifying time frames and expectations.

Your playbook should answer key questions for your department, your employees and your discovery partners. As noted above, it should address every component of discovery from the initiation of a potential matter to its eventual resolution in clear terms. What happens after you issue a legal hold? When must you provide answers to custodian questionnaires? Who reviews those responses? How are custodians interviewed and when are those interviews completed?
Expand these components beyond your internal staff to any vendors or law firms that you work with and make sure they are trained on and understand the processes set forth in the discovery playbook. How long do they need to turn over data after processing? How quickly can they draft a review protocol and assemble a potentially customized coding panel? Ensure that you establish clear expectations and consequences for failure to meet those expectations.

Formalize your plans for a kickoff call involving all relevant players, both internally and externally. Determine when you’ll conduct any necessary training sessions and map out the steps of your iterative data collection, processing and TAR. As noted earlier, a well-developed playbook will also set forth a standard review workflow and responsible parties for first-pass review, document prioritization, enhanced QC and privilege review.

But don’t become too wedded to your approach. As much as you want to create consistent, repeatable processes, you also want to keep your playbook fluid so it can grow and adapt to meet your needs. That way, you can consistently improve your discovery practices, finding new ways to save money and control your budget.

Again, some organizations resist this level of effort and perceived expenditure, missing the savings that follow the investment. But when you’re in-house, you can’t afford to get into the weeds every time you have a case. You don’t have the time to reinvent the wheel with each matter. Having a standard process in place will give you confidence in your approach and allow you to save money and time by not revisiting your methodology with each matter.

By continually evaluating your protocols and partners, your approach to discovery can be both more accurate and more affordable. Over time, consistency and efficiency lead inexorably to cost savings as you learn from your data, build your data repository and spot new areas for improvement.
STEP 4
Reduce Review Volumes & Accelerate Review with TAR 2.0
Document review remains the most expensive stage of discovery—making it the most immediately impactful stage at which to control and limit spend. Today’s TAR 2.0 based on a continuous active learning (CAL) protocol is one of the lowest-hanging fruits to reduce discovery costs.

Think of CAL as Pandora for discoverable documents: You tell it what you like through your coding choices, and it gives you results that are closer and closer to your preferences. The richest information rises to the top of the pile.

TAR 2.0, such as Catalyst’s Insight Predict engine, can further reduce costs by decreasing the volume of documents necessitating human review. The utilization of TAR 2.0, a form of AI and machine learning, allows a company’s legal teams to review far fewer documents than keyword search or earlier TAR 1.0 systems, reducing document collections by 80% or more and finding the most relevant documents first. When your team begins coding the documents, the TAR engine continuously surfaces the most likely relevant ones first based on the previous coding decisions. In other words, it is always continuously and actively learning. When the system mixes in contextually diverse documents, a process by which the algorithm is actively finding documents which may be related but are unlike other documents that have been reviewed, the reviewers find documents they might not otherwise see.
With recent advancements in TAR, it is now very effective for more than large outbound productions—it equally is effective for nearly any review task of any size and document collection richness (including low richness collections), and today is used for investigations, opposing party reviews, deposition preparation and issue analysis, and privilege and privilege quality control (QC). The result is that you can continue to increase savings on review and save on outside counsel fees for nearly every case, including QC.

**How TAR 2.0 Works**

All TAR systems learn from human reviewers to prioritize relevant documents. But in TAR 1.0, we only achieved a single round of training. Now, with CAL, the algorithm keeps learning as the review progresses.

Whereas TAR 1.0 relied on subject matter experts or senior lawyers to build a seed set by precisely reviewing thousands of documents, CAL works in the background from the beginning to optimize the efforts of a standard human review team. The team begins reviewing in the normal fashion. Meanwhile, the CAL system considers each coding judgment as it occurs and continuously re-ranks and prioritizes documents based on what it is learning about relevance. As the system learns, it promotes the richest documents to the top of the pile, saving the review team time. A good CAL system will also use a contextual diversity tool to identify unseen documents and include examples for review in order to avoid relevance bias.
Suppose you start with a set of 1 million documents. Instead of basing your training on a few thousand documents and having to manually review the hundreds of thousands of documents that a TAR 1.0 system might note as potentially relevant, a CAL algorithm will continue learning the whole time you’re reviewing. As it goes, it gets smarter and smarter, ranking and re-ranking documents until you’re left with a fraction to review. Obviously, that cuts review costs markedly. What's also obvious is the time savings—now you’re looking at the difference between two months of review and two weeks, which can be essential in fast-paced litigation or investigations.

**High Efficiency Review Using TAR 2.0**

According to the recent *Legal Department Operations Survey*, more than 80% of corporate legal departments are using less expensive review attorneys to save costs. This includes regional law firms and/or managed document review vendors. However, many are still using keyword search to cull documents, looking at as many as nine non-responsive documents for each responsive one. That means they are wasting their time for about 90% of their review efforts.

The TAR 2.0 ratio is much more narrow, on average two to one, which means that the team looks at just two documents to find one relevant one. That means the team finishes faster and bills less. When combined with an expert managed review team, the cost and time savings can be even greater—especially when the team is using a tool like Insight Predict not only for first-past responsiveness review, but also privilege, privilege log and the majority of QC review.

The importance of TAR 2.0 for many types of review cannot be overstated. Don’t leave this powerful tool on the table.

1. *Law Department Operations Survey*, Blickstein Group, September 2018

“It baffles me that attorneys overwhelmingly still use keywords instead of TAR. I don’t know why. Perhaps they don’t understand the technology. We cannot be afraid of technology.”

- Andrew Peck
U.S. Magistrate Judge
U.S. District Court Southern District of New York, 1995-2018
Senior Counsel, DLA Piper LLP (U.S.)
STEP 5

Leverage Business Intelligence for Better Decision-Making
Taking another page from the legal operations playbook, using data metrics and business intelligence (BI) strategies and tools can both improve matter management and drive informed strategic decision-making to reduce costs.

As briefly discussed in Step 2, centralizing your legal data, only when data is aggregated and integrated into a central repository does meaningful reporting become necessary. With good reporting you can better budget, properly manage day-to-day legal operations—including the daunting task of resource allocation across multiple matters—catch problems before they occur, and easily keep other stakeholders informed.

Sophisticated tools such as Catalyst’s Insight BI display up-to-the-minute metrics and analytics that support day-to-day discovery and budget management. For example, knowing at any moment how many custodians you’re waiting to hear back from, the status of collections, how many documents you have yet to review or if there are enough review resources to meet current timelines, allows you to estimate whether you can meet your deadlines and stay on budget.
A good BI strategy should help legal department professionals accomplish the following:

- Aggregate key e-discovery metrics, such as custodians, collections, matters, deadlines, resources and allocations across matters, comparing them with historical review metrics. With historical trends and project reports, you can get to know who your data holders are and marry your business operations and document management protocols with your investigation and litigation portfolios.

- Integrate information from the core repository with other relevant systems within the corporation, such as legal hold and collection technology, and accounting and human resource systems, for a more comprehensive understanding of costs and establish and adhere to a discovery budget.

- Understand key performance indicators to track the progress of cases, ensure proper resource allocations based on availability and deadlines, evaluate pricing models and assess legal spend across vendors and outside counsel.

- Make informed strategic decisions. For example, if you know that 60% of a custodian’s collections were identified as privileged across all prior matters, you can use such insight to collect differently from that custodian. At the very least, you know there will be budgetary impact and can plan accordingly, since it’s costly to review a privileged document.

- Integrate TAR metrics into the dashboard, keeping you apprised of the progress and the cost of a review.

- Summarize counsel performance to help vet billing rates. This keeps outside counsel diligent about billing and logging hours and shows you where you can save money without sacrificing quality.

- Provide easy access to only the metrics that matter for a particular role, and external reporting to inform critical players who might not proactively engage the system.
By aggregating organizational data across matters, you can identify process improvement opportunities and work these into your evolving discovery process playbook.

Remember, of course, that you're trying to know your data better. A metrics dashboard is your classroom: It can continually educate you on how much data you're ingesting, how much data you're reviewing and how much of that reviewed data is ultimately being produced. Considering those measures within and across matters will highlight issues that you can address to limit low-value spending.

You can also get a realistic sense for how closely you stick to your budget estimates and how much your discovery spend varies from month to month. In addition, you can see how long processes take, improving your predictions for timelines and turnaround constraints. By combining metrics with your playbook, you can quickly decide what actions you must take to respond efficiently to time-sensitive requests.

Use your dashboards to create and analyze quarterly and yearly reports by case type, jurisdiction, counsel and any other relevant measures you can identify. Aim for predictability, control and reduced costs. You may find that you need to renegotiate service provider contracts or change providers altogether—but you'll be doing it based on sound data.
Conclusion

With the right technology and best practices, legal departments can improve daily operations, more effectively plan for and control discovery costs and continually evolve their organization with data-driven intelligence.

Remember that at the start we referenced three key themes that both support and are supported by our five steps. So, for instance, the key theme of “know your data” makes it easier to implement legal holds (Step 1) and develop repeatable processes (Step 3). But you can know your data better when you switch to a centralized data management system (Step 2) and develop dashboard metrics to assess your moment-to-moment success (Step 5). And applying technology to expedite and enhance review (Step 4) makes it quicker and easier than ever to review your data and extract critical insights.

Keep an eye on those foundational themes—approach your legal department as a business operation, know your people and know your data—while you implement these five steps for successful oversight of discovery spend and budgeting. As you automate and streamline legal holds and data collection, centralize your data management, develop a playbook of repeatable processes, expedite review using technology (particularly TAR based on CAL), and track metrics across matters via up-to-date dashboards, you’ll find that you can predict and manage your discovery spending better than you ever expected.