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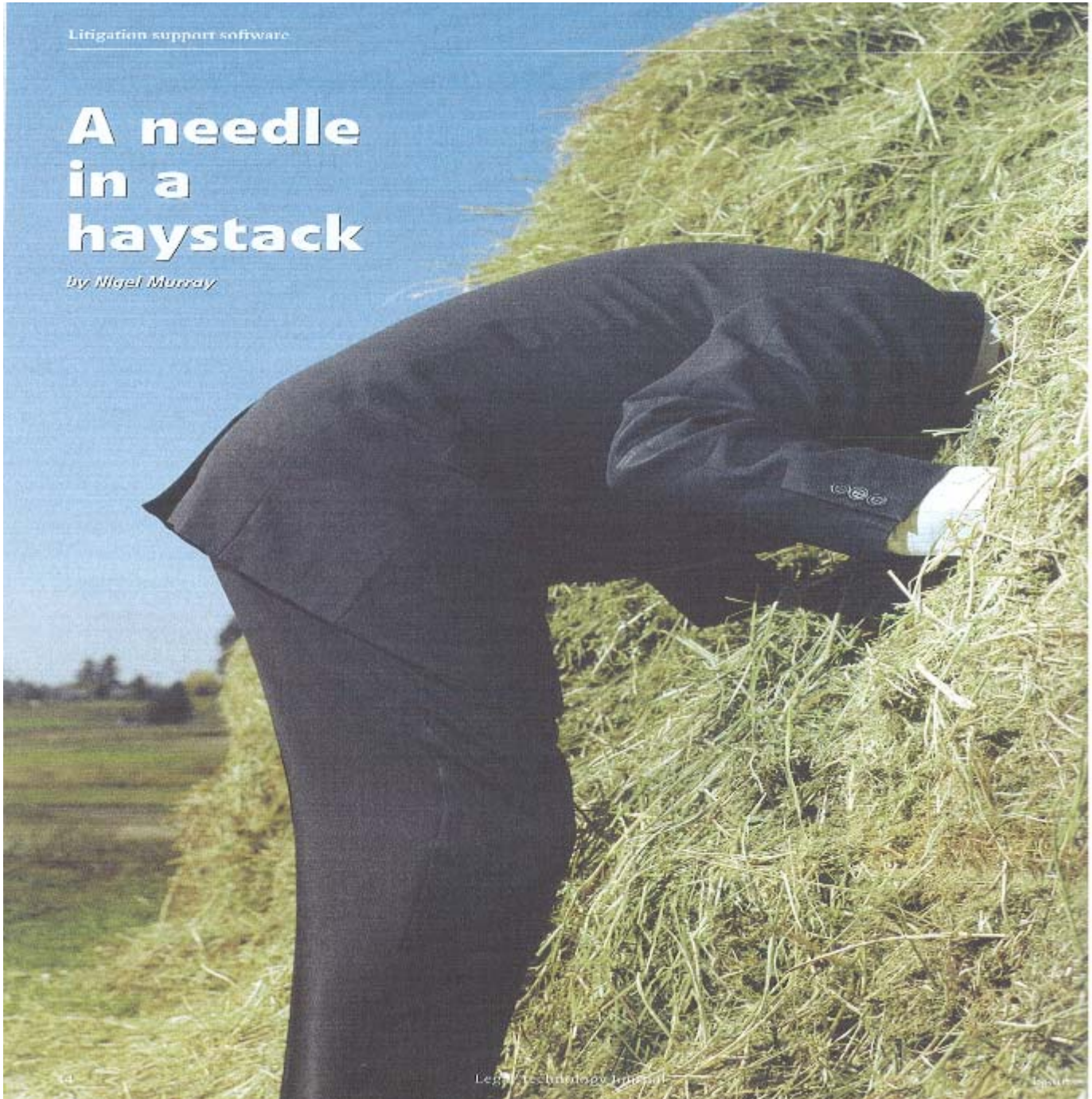
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## Legal Technology Journal

Litigation support software

### A needle in a haystack

*by Nigel Murray*



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Trying to find relevant documents within a mass of electronic files can seem like an impossible task. But the technology is available to make matters easier and it is constantly evolving and improving

**THIS ARTICLE FOCUSES ON SOME OF THE TRENDS** in software aimed at the dispute resolution market. However, as practice areas other than dispute resolution are starting to face ever-increasing volumes of documentation – both electronic and paper – as well as financial pressures (both internal and from clients) to manage their case load more effectively, these tools are being applied across a much broader spectrum. A number of the large US firms and at least one of the top UK firms have recognised this to the extent that their historic ‘litigation support’ directors/managers and staff now hold a ‘practice support’ job title. Accordingly, where litigation is referred to, the point being made applies equally not only to other forms of dispute resolution, but also to other practice disciplines within a firm.

The volume of e-data in matters continues to grow – seemingly exponentially. As courts, parties and litigators become more conscious of the importance of this data and more adept at ensuring its availability during litigation and regulatory matters, managing it has become a more significant challenge for the producing and requesting parties. Clearly, the mandate is to discover better ways to find the ‘stuff that matters’ in the most efficient and cost-effective manner. These days, that is more easily done than it has been in even the recent past. Achieving that goal requires modern litigators to assess how to best view, search, categorise and disclose electronic data. Fortunately, evolving technology is allowing litigation teams to utilise a variety of tools to help form the best strategy for digging through mounds of digital documents accurately and efficiently.

### Why use technology?

There are several good reasons for using technology. First, and perhaps most obviously, the volumes of documents potentially relevant to a dispute have increased dramatically as a result of

e-mail and the rise in electronic filing. Multiple copies and versions of documents now exist where they may not have done on paper.

Furthermore, the process of reducing the number of documents by identifying and/or removing duplicates, those which fall outside specific date ranges and those from non-relevant parties can be achieved far more quickly using technology – and at a fraction of the cost of carrying out these tasks manually.

Finally, teams usually work more efficiently when they can collaborate on the review of the documentation, where priorities can be set, their remarks shared, and any external counsel’s and experts’ comments can be viewed. Additional time can be saved by using technology to reduce the overall document population, whether by keyword searches or more advanced concept searches (both of which are covered below).

### Practical challenges

Life was fairly straightforward when clients’ documents consisted of paper – gather the potentially relevant files, photocopy or scan them, then review the results for relevance. The gathering of the files could get moderately complicated – files could be in multiple locations or they could have been archived. These challenges, however, increase dramatically with electronic documents. Potentially relevant files could be stored on an individual’s PC and/or laptop, one or more central servers, off-site servers and/or back-up tapes.

My experience over the past four years has been that the requirement to conduct full searches across all potential storage areas has only been required in a small number of matters. More often, the client has one or a number of mailboxes plus a moderate number of non-e-mail documents that they copy onto CD/DVD before sending to the lawyer.

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### Review software round-up

#### Simple tools to gather and review small volumes of electronic data

- eDoc Review [www.trilantic.co.uk](http://www.trilantic.co.uk)

#### Client server-based products (ordered by worldwide usage)

- Summation [www.summation.com](http://www.summation.com)
- Concordance [www.dataflight.com](http://www.dataflight.com)
- Openlaw [www.openlaw.co.uk](http://www.openlaw.co.uk)

#### On-line systems (ordered by worldwide usage)

- iConect [www.iconect.com](http://www.iconect.com)
- Ringtail [www.ringtailsolutions.com](http://www.ringtailsolutions.com)
- Introspect [www.steelpoint.com](http://www.steelpoint.com)
- Concordance FYI [www.dataflight.com](http://www.dataflight.com)

#### Concept search systems

- Attenex [www.attenex.com](http://www.attenex.com)
- Aungate [www.aungate.com](http://www.aungate.com)
- Synthetix [www.syngence.com](http://www.syngence.com)

I have also seen that, more often than not, in UK matters, paper is going to be relevant. Therefore, any solution that handles electronic documents must also be able to present the information on paper in the same format. For example, where an e-mail has been responded to by a letter, or where e-mails that fall within the relevant period have been deleted as part of a company's archive policy, the only recourse is printed copies.

To understand how the various types of software fit into a broader system, it is necessary to understand the overall journey of the documents, from when they reside within the client company to being identified as being relevant to the matter. This description will be broad, as no two matters are the same. However, the aim is to give the reader an idea of the principles.

#### Filtering

The volume of documents held electronically can be huge – as a guide, a rGb USB drive (the sort that fits on a key ring) can hold the equivalent of 30 bankers' boxes of documents if these were to be printed. The vast majority of this tends not to be relevant. Filtering is therefore the key to identifying non-relevant documents and weeding these out of the 'core collection' to reduce the amount of time – and cost – involved in document review by the legal team. Filtering should begin as early as possible, planned from the outset and adjusted as the matter progresses.

Techniques used for filtering range from the relatively simple to complex. The list below is not exhaustive. Simple filters will do one or more of the following:

- Identify key individuals in the matter – and focus on the location of their documents.
- Identify the relevant period – and filter out all documents which fall outside this.

- Identify exact duplicates – and filter these out. For example multiple back-up tapes will hold a large number of exact duplicates.

More complex filters, which will do the following, generally require more thought and planning:

- Identify near duplicates – documents that are intrinsically the same – from the same author, to the same person, with exactly the same text – but in a different format (eg one copy is on paper, another is held electronically) or in a different person's e-mail box.
- Keyword searches, which are always to be treated with caution – my general advice is to search for names and/or proper nouns as themes and phrases can produce poor results.

All the above can be achieved today – however, no single system is available that can do them all. Most of the litigation support vendors have invested heavily in bringing together a range of these technologies, which can be mixed and matched to suit the needs of the matter. Some law firms have invested in individual tools, though due to their complexity they tend to be used by dedicated litigation support professionals.

#### Review

Having filtered the data population to more manageable proportions (though these could still be very large), the next stage is to review the results as cost-effectively as possible. Any review exercise consists of various assessments. Is the document relevant? To which issues or witness is it relevant? Is it privileged? Not all of these need to be done by individuals with the same skills or experience – or even in the same geographic location.

The first stage – assessing the relevancy of the document – can be undertaken by an individual (eg a paralegal) who has been properly briefed on the matter and the issues as at that time. They can then review a document and place it into one of four relatively simple categories; 'hot' (a document that a senior member of the legal team should look at soon); 'relevant'; 'potentially relevant' (not relevant now, but might be should the issues change); and 'not relevant' (and never will be). Subsequent stages can be carried out by more senior members of the legal team, though their efforts will probably be focused on the more important aspects of the review.

Software is available to assist with this process, which can speed things up overall and, again, reduce costs. The various types of software are set out below, with examples listed in the box, 'Review software round-up'.

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### Review software

#### Simple tools to gather and review small volumes of electronic data

The electronic document review process consists of the extraction of key information from e-mails and electronic documentation and its subsequent insertion into a spreadsheet. The resulting spreadsheet contains the key metadata and a direct hyperlink to the original document. With no software cost or training burden, lawyers can efficiently sort, filter and view their documents.

#### Client server-based products

Client server systems are products designed specifically for litigation, which are bought by a firm for a number of matters. The software and documents are resident on the firm's servers and the system is administered by the internal IT department. It has been difficult in the past to pass the costs of purchasing such systems as a cost-specific to a matter, although of the software listed, Openlaw does offer a matter-based pricing model.

#### On-line products

On-line products are hosted databases (either internally or by a third party) that enable any user with the appropriate access rights to view and work with their documents over the Internet. As such, clients, counsel, experts and travelling lawyers can access the documents irrespective of their geographic location. When hosted by a third party, charges are based on a monthly rental fee, dependent on the volume of data – and provided it is agreed that it can be passed on as a legitimate cost of the matter.

It is worth noting that in the area of corporate transactions (as opposed to litigation) there are a number of solutions. However, most tend to be proprietary to the vendor of the services rather than in widespread use.

#### Concept search tools

When faced with large document populations to be reviewed, legal teams have three options: review every document; carry out keyword searches to identify documents; or use one of a new breed (to the UK) of tools that identify documents with common themes by evaluating their text, known as concept search systems.

#### The future

Predicting how the market will unfold is always going to be tricky. However, I see a number of themes starting to come together:

**Consolidation:** some of the larger US vendors are already acquiring a variety of companies to enable them to offer a 'single solution' to their clients through all the various stages of a matter. This will be an interesting area to monitor. For example, by joining together one of the software companies with a litigation support vendor and bringing it into a company specialising in corporate restructuring will assist their historic clients.

However, I suspect that client conflict will need to be carefully checked in such circumstances.

**Standards:** there are currently very few standards, and certainly no single 'best practice', regarding how to process electronic documentation (though various organisations are working on

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the problem, such as LiST Group in the UK and The Sedona Conference and EDRM in the US). Having closely observed, and in some cases been involved with, some of these initiatives, I predict that in the next couple of years we are going to see standards emerging in this area. However, these will be probably focused more on the 'how to' rather than the various tools and software that actually assist in the 'doing'.

**Evolution:** the software will continue to evolve. As lawyers become more comfortable handling electronic documents, so their searches will widen to include PDAs, voicemail, instant messaging, mobile phones etc. Software is on the market that can handle the recovery of data from such devices; however, filtering will be the next challenge.

**Broader scope:** review software will expand to incorporate more of the gathering and filtering technologies.

**Broader use:** the traditional litigation support tools, methodologies and areas of responsibility will expand to other areas within a firm.

There is currently no single solution that can cater for paper and electronic documents from acquisition to the assessment of relevancy. Costs associated with very large volumes of electronic documents can be huge. Therefore, a strong filtering and review strategy is required. A law firm will need a range of software solutions to manage a varied caseload. But the market is evolving rapidly – indeed, the solutions and techniques on offer in July 2006 are substantially more advanced and complex than they were a year ago. <sup>17</sup>

*Nigel Murray is the managing director of Trilantic.*