Driving The Future of Digitized Law Through eDiscovery and Information Governance

In the Digital Dark Ages, attorneys handling discovery for a case were tasked with reviewing towering reams of paper documents. Law firm case rooms would be stacked full of file boxes containing years of a client's correspondence and financial history. Frequently, the attorney who could master the challenge of wading through these records was more likely to succeed in a case. That challenge still exists in discovery but has increasingly moved to an electronic and virtual format, commonly known as eDiscovery.

As technologies evolve, eDiscovery attorneys are faced with the need to quickly understand how data is stored and accessed within each new system or platform – and how to efficiently search and understand the contents. Equally important in the Information Age: Not only does discovery involve unearthing the opposition's (and your own client's) relevant records, but it is an essential part of making sure your client's case can be fully and strategically supported. Redgrave LLP is a law firm at the forefront of eDiscovery and information governance innovation.



Vanessa Barsanti

Redgrave LLP strengthens influence in the field with the addition of Vanessa Barsanti to its Los Angeles office.

In a recent interview, the firm outlined how relevant these services and solutions are to multiple industries, no matter a company's current litigation status.
"I'm afraid law schools are way behind in training students to understand digital issues, like eDiscovery and information governance, and how critical they are to every sector," says Jonathan Redgrave, managing partner at Redgrave LLP.

"Most American Law 100 firms that claim to offer these services, when you peel back the onion, mostly only perform document review. Traditional law firms have not prioritized these areas as a substantive specialty, and accordingly, they don't have the bench of talent to address and manage cutting-edge issues. Adding to the challenge is that many corporations rely on platforms designed more for internal collaboration than external legal discovery. That's why our boutique firm is thriving with our focus entirely on the array of electronic issues, including governance, privacy, and data analysis."

Jonathan and his wife Victoria, chair of the Firm's Executive Committee and majority shareholder, launched the Northern Virginia based firm in 2010. Redgrave LLP has eight other office locations across the country and more than 60 employees, making it one of the largest law firms in the U.S. exclusively focused on eDiscovery and information governance. In 2020, the firm was recognized by Chambers USA as the only top-tier law firm in the country in the field of eDiscovery and Information Governance. Redgrave LLP has two California-based office locations, including one in Los Angeles, which in July 2020 was joined by Vanessa Barsanti as a partner, after a decade at Kirkland & Ellis LLP, where she was most recently Of Counsel.

When asked what drew her to Redgrave LLP, Barsanti says, "I have worked with Redgrave LLP on several cases throughout my career. The firm has helped me with some very complicated discovery issues, so I appreciated and respected their leadership in this field."

"Vanessa is highly regarded for her knowledge and experience with discovery in large litigation matters and restructurings," Redgrave says. "We are fortunate that she has joined our team."

Highly regulated industries, including pharmaceuticals, banking, and finance, are often much more prepared for eDiscovery than others since they need to comply immediately with regulator requests. Companies that have been burned by lawsuits also recognize the need to invest in these services, "but there are leaders and laggards in every industry, even in Silicon Valley," Redgrave says.

The relevance and value of having a process for managing the preservation and discovery of paper documents has not dissipated. Barsanti says companies facing ongoing crises are more likely to save every piece of paper printed, from a meeting presentation with handwritten notes to the

menu for lunch that day, adding to the haystack of documents to search through to develop the discovery strategy.

"Company leaders are rightly heavily focused on resolving the company's urgent issue and do not necessarily consider the impact of document management (or lack thereof) on inevitable future investigations and proceedings," she adds. "That's why it's important to have a competent discovery team early on providing preservation counseling. One that can tackle the digital data, but still recognizes that paper will always play an important role in developing the overall approach."

Not surprisingly, the staggering economic effects of the pandemic have U.S. bankruptcy courts gearing up for a wave of filings. This circumstance has increased the demand for law firms restructuring teams and talent, which was already booming. Redgrave LLP has spent the past year developing a specific focus on restructuring discovery.

"Discovery happens at a much faster pace in restructuring matters than traditional litigation. The longer the bankruptcy proceeding takes, the more fees paid to counsel, advisors, etc., leaving less for the emerging company to continue," Barsanti says. "Having a team with significant experience in the issues that regularly arise in restructuring, like the team here at Redgrave, allows for considerable efficiencies in the discovery process."

Beyond eDiscovery and information governance issues, Redgrave LLP addresses cybersecurity and privacy needs for clients. These needs have become increasingly critical due to the need to transform workplaces into numerous remote offices because of COVID-19.

"Companies have spent significant time vetting their systems to create secure channels and authenticate access, but the sudden need to streamline and expand remote communication has required workarounds," Redgrave says. "They must pay urgent attention to their vulnerabilities since much of the vigilant due diligence before onboarding new technologies and platforms has gone out the window."

Privacy issues and regulations, such as the California Consumer Privacy Act and the EU's General Data Protection Regulation, are also causing clients to "wrestle with an octopus," Redgrave says.

"The challenges of dealing with a patchwork of regulations are getting more complex. It also doesn't help when California says, 'we aren't going to give you more guidance, you'll have to settle these issues in the courts.' Or the EU says long-time privacy standards (such as the EU-US Privacy Shield) are no longer valid.

"We advise clients to have adequate internal processes for evaluating each new technology's onboarding, even on an expedited basis, to account for who uses it and for what purpose, and which privacy laws apply," Redgrave adds. "If a new regulation pops up, you need to have a snapshot description of the technology or platform ready to aid in the analysis. This way, your company can plan and stay ahead of the impact of unexpected regulatory changes."

Contrary to what many lawyers and clients may believe, being able to go to trial effectively remains – as always -- critical. One cannot bank on litigation being tied up neatly with a settlement.



Jonathan Redgrave, managing partner at Redgrave LLP.

"You need to manage your information and data in discovery as if you will go to trial, and eDiscovery is critical to the process," Redgrave says. "When these things are done well, they provide an awareness of how strong a case is that you want to prove, and make sure negotiations don't get ahead of the documents that back you up, which could cost you a lot of money. It's amazing to me that many firms have not glommed on to how important proper information governance is."

"It's important to consider trial strategy in the early stages of discovery," Barsanti says. "Losing sight of the information and documents you will need to ultimately prove and/or defend can result in a critical error. Though it might take years from the filing of a lawsuit until you get to settlement discussions or trial, truly understanding the strength of the case and your strategy early on in discovery is important in not only shaping the discovery process, but ensuring that the best possible resolution, whether through settlement, trial, or otherwise."

While there may be room for improvement for law schools surrounding eDiscovery and information governance education, Redgrave and Barsanti say they have been surprised by how smoothly digital law needs have been integrated into the court system, especially at the federal level. This awareness has likely helped courts cope with the sudden need for electronic and virtual communication during the pandemic.

"We've been encouraged by how open judges are to learn different ways to receive information. Similarly, we are thrilled to see how receptive they are to come up to speed on technical issues in specific cases," Redgrave says. "Organizations like The Sedona Conference, the Institute for the Advancement of the American Legal System, and the Electronic Discovery Institute have done an excellent job of bringing the bar and bench together on how the Information Age is changing the legal landscape." — By Scott S. Smith, California Business Journal.

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