

Turning The Tables On E-Discovery: How Innovation Can Transform Challenges Into Opportunities

The Editor interviews **Brian A. Davis**, Co-chair of Choate Hall & Stewart LLP's Litigation Department. Founded in 1899, Choate is a Boston-based firm with a national legal practice. Choate has long been a believer in the "one-firm, one-roof" philosophy and offers its clients a unique alternative approach to the "big firm" legal model. Mr. Davis agreed to be interviewed regarding his firm's innovative e-discovery methodology and Choate's experience with Equivio>Relevance.

Editor: What are some of the biggest challenges around e-discovery in litigation?

Davis: The digital era caught the U.S. legal system somewhat unawares and has simultaneously created a wave of new problems and opportunities. While centralized servers, e-mail and mobile devices make day-to-day corporate life far more productive and efficient, these technologies also generate massive amounts of electronically stored information (ESI) that raises unique issues in the litigation context. In fact, with the cost of disposal for electronic data now greater than the cost of storing the data, many companies are literally swimming in ESI that can be relevant to a particular lawsuit or investigation. Dealing with the deluge in an efficient, defensible way poses a significant challenge.

The old ways of collecting, sifting and analyzing potentially relevant data obviously no longer work. Although some firms still are trying, it simply is not feasible, economically or otherwise, to review hundreds of gigabytes, or even terabytes, of ESI on a "page-by-page" basis. The costs can be prohibitive and the results uneven. Moreover, initial methods of managing the electronic discovery process developed over the last ten years or so have fallen short. Arbitrary keyword searches and other basic techniques, such as "fuzzy searches" or "clustering," often have proven to be over-inclusive, under-inclusive, or just plain inaccurate. The courts, as well as clients, are expressing increasing concern regarding these methodologies and their inherent drawbacks. It's clear that there needs to be new thinking at all levels about overcoming the problems posed by large volumes of ESI.

Editor: There has been a great deal of discussion about the very high costs associated with e-discovery. What have you done to help mitigate those costs for clients?

Davis: The Choate litigation model has long been focused on providing our clients with exceptional service at a reduced cost. We're not a 1,000+ lawyer firm with multiple offices; rather, we rely on lean case teams with all of our attorneys in one location in order to better manage and supervise the entire litigation process. We've also devoted a substantial amount of time and effort over the last few years identifying,

adopting and refining the best e-discovery tools and techniques, and re-engineering the data collection and review process, so that we can better leverage our resources and deliver dramatically more "bang for the buck" to our clients. Because current approaches to e-discovery no longer are sustainable, the market for potential solutions has exploded – new e-discovery vendors and tools crop up just about every day. Our mission has been to find a truly innovative and useful approach, not the same old method reconfigured with a new design. Equivio>Relevance is one of the most impressive e-discovery tools that Choate identified.



Brian A. Davis

Editor: What attracted Choate to the Equivio>Relevance Product?

Davis: Equivio>Relevance operates much differently than traditional e-discovery tools. Unlike many other analytical tools on the market, Equivio>Relevance does not rely upon keyword lists or complex linguistic models. Rather, it leverages the knowledge of the most informed and qualified members of the legal team, compiled through an iterative online training process, to automatically sort and rank potentially relevant ESI according to the data's relative significance to the case. In this way, Equivio>Relevance takes a multi-dimensional view of the data it assesses, distinguishing it from the older and less accurate linear model of data analysis.

Equivio>Relevance's supervised learning approach also allows it to adapt as new issues become either more or less significant. It's not simply a "one-time and you're done" approach. Instead, the system continues to leverage the attorney's knowledge and judgment as it assesses the data to make enhanced determinations regarding information relevance as the case progresses.

The advantages we have gained by using Equivio>Relevance, in combination with other tools and techniques that Choate has developed, are numerous and significant. Equivio>Relevance gives Choate personnel the ability to rapidly sift through and assess large volumes of ESI accurately and efficiently, while dramatically reducing the costs associated with that process. Simply put, fewer human reviewer hours means less cost to the client.

Equivio>Relevance not only offers a new way to quickly and efficiently find the proverbial "needle in a haystack," it also allows the user to locate the most important needles first. Using Equivio>Relevance, Choate personnel can identify the documents and information that are most likely to be relevant and prioritize the review process so that those materials are examined early in the process (often within a few days or weeks of arrival) by the individual

reviewers who are best able to understand their significance. Forming an early, informed understanding of the good and bad facts pertaining to a particular matter – frequently referred to as "Early Case Assessment" – is essential to making intelligent strategic decisions that can impact the matter throughout its entire course. Rather than being just a buzzword that many providers promise but don't deliver, Equivio>Relevance has permitted Choate to make honest-to-goodness "Early Case Assessment" a reality for its clients.

We further like the built-in reporting and verification functions contained in Equivio>Relevance, which provide a real-time understanding of the recall and precision being achieved by the system, as well as the means to statistically verify the results obtained. These functions not only permit us to have confidence that Equivio>Relevance is doing its job properly, they also allow us to tailor and adjust our review processes in each specific case to maximize our efficiency.

Lastly, because Choate was one of the first law firms to adopt this innovative technology, we've had the opportunity to work closely with the team at Equivio as they continue to develop and enhance Equivio>Relevance. This has allowed our personnel to gain a very deep understanding of the capabilities of the product, while simultaneously giving us the chance to provide useful feedback and suggestions based on our experiences that have helped make Equivio>Relevance even better. It's been, and continues to be, a truly collaborative process.

Editor: What kind of challenges did you overcome to implement this new type of e-discovery and litigation review process? How has it worked for you?

Davis: Perhaps the single biggest challenge was simply overcoming the outdated mindset, among both attorneys and clients, that ESI should be treated like old-style paper documents for discovery purposes. Yes, electronic data definitely poses significant litigation challenges, but it also offers some intriguing opportunities. Properly handled, ESI can be made to do things that no one even dreamed of when the world was strictly paper-based. Imagining and exploiting those new possibilities requires a major shift in discovery thinking and methodology.

Equivio>Relevance is one of a select number of new, truly innovative e-discovery tools that Choate has encountered. While we were quickly sold on the concept, we were skeptical of its actual capabilities at first. To satisfy ourselves, we tested Equivio>Relevance in various settings against traditional human review, which has long been considered the "gold standard" for discovery purposes. We took a completed document review that had taken over 500 hours of attorney time and ran the same data collection through

Equivio>Relevance. A senior lawyer who was familiar with all aspects of the case spent less than 20 hours training the software to identify responsive documents. The results were astounding: in a fraction of the time and with less than five percent of the effort that human review required, Equivio>Relevance was able to accurately identify and rank effectively the same set of "hot documents" that emerged from the human review. Moreover, the accuracy of the results obtained from Equivio>Relevance were at least as good as the results of the human review. Since that time, we've been staunch believers.

Editor: What kind of results have you been able to achieve with Equivio>Relevance?

Davis: Our subsequent experience with Equivio>Relevance has confirmed our initial impressions; the software routinely cuts large ESI population review times and costs by 50 percent or more. We've seen the same result in multiple matters. We're confident that it can be replicated across most standard ESI populations.

While the cost savings are substantial, we think that the Early Case Assessment advantages gained by using Equivio>Relevance are equally, if not more, significant. Now, within a matter of a few days or weeks of starting a large data review, Choate litigators often are able to identify the basic universe of "hot documents" that can make or break a case. Knowing the facts earlier helps us and our clients to be smarter, more formidable opponents. The impact can be dramatic.

For example, using Equivio>Relevance, a team of three Choate attorneys and paralegals recently was able to sift through and analyze a production of approximately 15 gigabytes of data (over 500,000 pages) from an opposing party and prepare a series of trial-quality timelines, setting out the important events in the case based upon the information obtained, in less than 30 days from start to finish. The timelines were presented to Choate's client in order to provide the client with a comprehensive assessment of the case and the likely outcome. Using traditional review methods, the same steps typically would have taken many additional months, and many additional dollars, to complete. To put it mildly, the client was pleased.

Editor: What can in-house counsel do to reduce e-discovery costs?

Davis: The e-discovery landscape is changing rapidly. More powerful and more cost-effective tools, like Equivio>Relevance, are becoming available. Be open to innovation, but remember that not all e-discovery tools and e-discovery vendors are created equal. Choose carefully, and make sure that your outside counsel is sufficiently experienced in using the tools that you select.

Please email the interviewee at bad@choate.com with questions about this interview.