

## IS E-DISCOVERY TOO EXPENSIVE?

There was a fascinating thread recently on the Lit Support ListServ that was started by the following post. *"Why is EDD and Data Processing So Expensive, why can't IT or my secretary do this? I know that we have all been faced with this so I am wondering if anyone can point me to a few good references, as I want to write a document that the average person can read and understand. This will help from having to explain this 300 times a year."*

The answers have ranged from the comically brief: "It runs on magic, and magic is expensive." and "Why should lawyers get to make all the money?" to a concise and erudite answer posted by George Socha:

*"First: 'Why is EDD and Data Processing So Expensive?': Processing ESI can be expensive because consumers demand that the work be done very quickly and with a high degree of accuracy and reliability, in conditions where it may well be that at the outset no one knows the scope of the undertaking or the complexities and challenges to be encountered along the way. Prices vary greatly, at least in part because processing means many different things. Prices have dropped considerably; as a result, however, there now is the danger of consumers paying such a low price that providers end up cutting too many corners, with a drop in quality that may not be acceptable."*

*"Second: 'Why can't IT or my secretary do this?' If IT or your secretary has an acceptable level of expertise and experience and is provided an acceptable level of resources, then IT or your secretary can do the work. One is not able or unable to handle the challenges of dealing with ESI simply because of the name of one's employer or the title of one's position. An organization does not magically become qualified to engage in electronic discovery activities simply by calling itself an electronic discovery provider, nor is an organization automatically disqualified simply because it is a law firm or a client. Rather, it is a question of expertise, experience, resources, and the like."*

But really to me the query seems to beg question, "what is e-discovery"? Learned commentators such as Ralph Losey and Craig Ball have been tackling that question for

some time now but it would seem to me that anyone who truly understands the basics of e-discovery knows that the answers to the list serv post are 1. It isn't too expensive if done properly and 2. Because you need special training.

What the question really shows is the complete disdain attorneys have for issues involving technology and the people who deal with them. Would that same attorney ask why his IT or secretary couldn't draft a Motion for Summary Judgment or a restraining order? The fact is most attorneys think if you don't learn it in law school it isn't professional and anyone should be able to do it, which is why first year associates fresh out of law school in New York or Chicago or LA make 2-3 times much as IT and lit support professionals with 10-15 years experience.

Think I'm wrong? Read Craig Balls post of Feb.9 on EDD Update titled What do you call someone who gets the lowest passing grade on the Bar exam? where he recounts an experience lecturing a class at the University of Texas Law School on e-discovery. At the conclusion of the lecture a third year law student asked if he really needed to "know this stuff?" After being assured he did to avoid acts of gross negligence in his practice, did the student ask the best source of technical information on e-discovery? Of course he didn't. He asked "What's the least I need to know?"

That's why e-discovery is too expensive. Because the people who need to know most only bother to learn the least.