GPSolo Podcasts – Brown Bag Series

Big Firm Discovery on a Small Firm Budget
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OPERATOR: This is Conference # 1868506

(Lyn Howell): Good afternoon. My name is (Lyn Howell). And I am the chair of the GPSolo program sports. And I’m kicking off today’s session.

Welcome to our GPSolo podcast. And our topic today is Big Firm Discovery on a Small Firm Budget. We have experienced litigators from both small and large firms are going to discuss how smaller firms can produce and digest the ever increasing amount of e-discovery within a limited budget.

So the way we will host today is shortly I will be introduced, turning the program over to Melanie Bragg who is our chair and celebrated author of the GPSolo division. We ask you to look forward to next month where we’ll be discussing her brand new book, “Defining Moments” and also get a chance to meet her in New York at our joint meeting with Section of Litigation in May, which she will briefly describe. Then we will move in to our presentation.

At 12:45, we will begin taking questions. And we will give you instructions at that time. This point gives me great pleasure to turn the mic over to Melanie Bragg.

Melanie Bragg: Thank you, (Lyn). I’m really excited about today because we’ve got wonderful, wonderful brown bag, Big Firm Discovery on a Small Firm Budget. We definitely all need to learn how to do that to save some money and also pack a big punch on our trials and our hearings that are kind of like trials.
I’m really excited about our New York meeting coming up. We’re doing GPSolo is meeting with the Section of Litigation in New York. Every spring, Section of Litigation does their big CLE meeting. There’re 60 different CLE programs.

We at GPSolo have 12 of those. And a lot of our wonderful members are going to be speakers. So we’re really excited about that. In addition, we’ve got a bunch of fun networking events and a bunch of fun social events that we’re going to be taking advantage of. So if you haven’t registered now, please go to ambar.org, A-M-B-A-R, .org/ltgpsolo. And that will tell you everything about the meeting. But I know it’s last minute. So just get signed up. We’ve extended the room rate and the early bird deadline. So that’s been extended for you. And we’d love to see you there.

But today, you’re going to get a sneak peak into this big firm discovery on a small budget. And John Austin is going to be leading the rest of the panel.

John Austin is the founder of Austin Law Firm in Raleigh, North Carolina. He practices in complex, civil and commercial litigation, catastrophic personal injury and wrongful death, low income housing credits, housing authority law, defamation, collections and creditor’s, debtor’s rights and appellate advocacy in the state and federal courts of North Carolina.

He's been an active member of the ABA in both the section of litigation and GPSolo. And he is a new member of our council. And he has served on the executive council for the Section of Litigation.

We have – this program we’re doing today is cosponsored by the Section of Litigation Trial Practice Committee as well as our active litigation committee. So let me turn this over to Mr. Austin for a wonderful program. Thank you so much for being here (everyday), all.

John Austin: Thank you, Miss Bragg. Again, John Austin. I’m an attorney in Raleigh, North Carolina. We’ve got – I’m – I’ll be moderating today. And we’ve got two wonderful speakers with us today. One is an attorney who has disability law out of Van Nuys in Los Angeles in California. Her name is Patricia McCabe. She’s represented thousands of social security claimants. She has a
law degree from Franklin Pierce Law Center. She also has a master’s degree in clinical psychology and a bachelor’s degree in microbiology.

She’s a board member or member of the board at the National Organization Social Security (Claimant) Representatives. She served on the Los Angeles County Bar Association and board of trustees. So we’re pleased to present Patricia McCabe.

We also had David Seserman who’s a trial attorney in Denver, Colorado. David has been a managing partner of a larger law firm and is currently a sole practitioner. He is known in Colorado as the go to for legal practitioners in the law firm dissolution area and has served as a liquidator of the two largest law firm dissolutions in Colorado history.

David lectures on business professionals and other lawyers on (broader) topics including trade secrets of electronic evidence, litigation strategy, employment law as well as electronic communications and privacy. He’s vice chair of the litigation in the ethics and professional responsibility committees for the GPSolo division of the America Bar Association. He’s also a member of The Sedona Conference eDiscovery Best Practices for small cases (graphing) committee. And we’ll be getting into that shortly.

We’re going to cover basically three areas today. The first two go hand in hand, and the first being the meet and greet or your Rule 26 conference. The second is managing the budget as well as managing your client’s expectations. Again, those go hand in hand. Don’t want to put the cart before the horse. But we’re going to put the Rule 26 beforehand. And then the third topic we’re going to talk about at the end is getting help from outside sources whether those be vendors, whether they be small law firm or contract basis or a large law firm.

So let’s start it off with David Seserman. Tell us about the importance of a – of the first meet and greet or the Rule 26 conference.

David Seserman: Be happy to. That the initial meeting preparation for the 26 conference is critical in these kinds of cases and in most cases. Traditionally, I think a lot of lawyers just approach it and say, “OK. Let’s put together something very
quickly. Let’s not pay a lot of attention to this.” And I – they do themselves. And they’re clients of this service when that – when that happens. What’s really important is especially if there’s going to be any sort of electronic discovery, is to become educated on what your client has, how documents are stored, how data is stored, what kind of ediscovery might there be, what kind of – identify what kind of various repositories for information may be necessary.

For instance, if you have an employment case, you may very well have a number of employees of a company who do a lot of work from home on their home devices. Those devices may be something that is subject to discovery. And that’s something to ought to be discussed at the – at the 26 conference. But it is – you know backtracking just a little bit, the ABA came out with you have model rule Professional Conduct 1.1 and a particular common (A) to that that requires lawyers to maintain the requisite knowledge and skill in the changes of law and practice including the benefits and risks associated with relevant technology. And I would posit that electronic discovery is included within that. So it becomes very, very important have a productive initial meeting. And in order to do so, you have to educate yourself ahead of time.

John Austin: OK.

David Seserman: Yes.

John Austin: Patricia, what is something you like to add to the Rule 26 conference as it – as it relates to your practice?

Patricia McCabe: There is. I think – I think before you even get to the Rule 26 conference, you have to clearly identify what issues are in your case, what discovery you believe is out there that will support those issues and how it is you’re going to mine that data. And I think you have to start with an action plan that identifies what data – I mean there is – there is most litigation involve significant amounts of data. But the question is what relevant data that’s proportional to identifying your issues that will actually support your case or that you believe may be a potential defense that you need to determine.
I think when you start with your action plan and you start approaching the Rule 26, you realize that it’s not – it’s not the starting point. The starting point is actually before that. And I think you have to keep not only the discovery proportion of the – what you’re trying to approve. But I think you also have to – understanding of where is this case going in order to support that.

At the – you have to also identify who is likely as David said to be in control of that data. And I think it takes a little bit of leg work to get to that point before you can actually start to really develop the Rule 26 discovery request.

John Austin: And at the risk of, well, hopefully not alienating large law firms or lawyers and large law firms, coming from the perspective of a small firm, do small firm practitioners want to kind of keep that area or that scope smaller just simply because they don’t have the budget to go on an expensive collection of all this data and to get copies of hard drives and of phones and of laptops and especially if they are held in third parties? What’s …

Patricia McCabe: I think that’s – I think you’ve kind of hit the nail on the head. When you’re a smaller firm and you have a case that may involve either medical – for example, certain types of evidence across multiple types of technology, I think you have to either truly sit down and focus on what will support your issues, what will help your case. I mean there is you need to narrow in on where your discovery is really likely to be relevant and where it’s likely to be located. I think the – you can partner with people. But it – before I think you can even get to that point, you have to have a clear understanding. And that may involve some discussions ahead of time. That may involve some discussions with your client and even opposing counsel to understand this is where – this is where you’re taking the claim. But those are factors that I think you have to clearly have a handle on so that you can determine what is likely, what’s going to be the cost and how relevant it is to support your case.

John Austin: David, your perspective on …

David Seserman: Yes. Sure.
John Austin: … push by big firms to increase the scope of discovery and therefore increase the cost of the litigation.

David Seserman: Let me answer that directly. And let me pull off of what Patricia just said, which is I generally agree of what she said. It is very important that you educate yourself and really consider proportionality. You know it – the days of every single document needs to be reviewed by an attorney page by page – by page really in the past. There are still many cases where that does occur. But when you get into a larger volume case, it’s just not practical. And so it is – it is very important that it as – for instance, me as a sole practitioner, if I’m going to take on a case that I know has hundreds of thousands of documents, I need to have a plan of action in place on how that’s going to be reviewed or dealt with.

And whether – you know a proportionality discussion and analysis among opposing counsel, the client as well as the court can help focus all of that discovery. And then you have to – we’ll get in this in a few minutes I think – but talk about what is the process that will be employed and how can you handle it. And there may be times quite candidly as a – as a – in a small law firm as a sole practitioner when you just say, “You know what? I’m fighting a national law firm. And if I can’t associate with other lawyers, it may not be a case that I can handle.” And if you run into that, I think you do have to have an honest discussion with the client as well as yourself and maybe your partners.

John Austin: Great point, Dave. And we’ll talk more about that managing clients and client’s expectations and cost in a moment.

Before we leave this section, let’s say you come to loggerheads with opposing counsel about proportionality and what should be kept. What are good arguments? And what are not so good arguments with the presiding judge about limitations on discovery and proportionality, which of course is part of Rule 26? Dave, currently …

David Seserman: I can answer that real quickly. Thank you.

John Austin: OK.
David Seserman: Just to real quickly, it is important focus. The answer – the days of asking – sending out discovery requests and, say, produce any and all documents or data that relates to the following are not going to help you in a proportionality discussion and the more you were dealing with in particular what is traditionally viewed as a large firm argument of, well, your honor, Mr. Seserman asks for any and all related to. And so we did in fact dump 300,000 pages of documents on him because we wanted to be overly inclusive and give him everything he wanted.

And the more specific you can get in terms of what it is you need, what you want looked at instead of any and all emails, perhaps you identify who the major custodians are. And you limit the request for emails to the relevant time period, not a 10 or 15 year time period.

John Austin: So essentially, you’re saying that you could shoot yourself in the foot by (profounding) discovery that’s very expensive and then trying to take a defensive position of, hey, we – this case is small. They’re asking too much from a – and then you find out that you shot yourself in the foot when you’re on discovery. Is that – is that the point?

David Seserman: Precisely.

John Austin: Patricia, your thoughts on that?

Patricia McCabe: Well, I think with – when trying to make – sorry. I’m getting feedback. Is that better?

I think the court looks at whether what you’re seeking is important to the case, what’s the cost or amount in controversy, how easy is it for the party to access whether that party is resources to provide this discovery and actually how key is that discovery to resolving an issue with the case and whether the (burn root) providing it actually (upwave) the discovery proportionality request. And I think you can make a reasonable argument being a small practitioner that you have when it is resources the amount in controversy may be smaller, that it’s key to one of your issues. And you need to limit the scope or the
proportionality of what’s being requested considering the size of a claim and the issues in the case.

John Austin: OK. I think that’s a – that’s a great point. Sorry. We’re having a little bit of technical difficulties with you, Patricia. Hopefully, those will iron themselves out.

Patricia McCabe: I’ll call back.

John Austin: Do you want to – do you want to try that? Well …

Patricia McCabe: Yes.

John Austin: … not – OK. Dave, if we can go on with you.

David Seserman: Sure.

John Austin: And let’s just discuss managing client’s expectations and developing a budget.

David Seserman: Be happy to. Ediscovery can get incredibly expensive if you’re not careful. There are – one of the things you need to do in terms of setting a budget and especially if the clients talk about – whoa. What is that? Whoa. You still there? We get kicked off.

(Lyn Howell): No. I think we’re still good.


David Seserman: Thank you. That one of – one of the things you need to do is look at how this is going to be done and weigh the various options. For instance, when it comes to emails, which really make up these days the bulk of or at least a significant portion of electronic discovery, is how are you going to gather them, how are you going to produce them. If you produce them in native format, that can be done very, very quickly if, let’s say, a client is using Outlook or Gmail. That that’s something very simple.
But of course, there are concerns about producing made of native for instance (PST) files to the opposing side. On the other hand, if you’re receiving them, it’s one of the quickest ways of reviewing it. There are lots of document review platforms that are out there with varying costs.

You know the decision to use one of those should be done in conjunction with a discussion with the client. I have a case right now where the cost is thousands of dollars a month just to host the data. You can talk to opposing counsel and see if you can agree on a document review platform that both sides will produce and host on, perhaps sharing and minimizing some of the costs.

But the bottom line is there is a potential for very, very significant cost in a case that can shock a client. And I think it’s very incumbent upon attorneys to have a very upfront discussion about various options, what it might cost and what the pros and cons are of the various platforms ranging from printouts of nothing but – just a bunch of hardcopy prints to very sophisticated document review platforms. So it is important to consider that budget.

And again, in a smaller case, you know the dollars or the importance of the issue may not warrant that kind of a huge hundreds of thousands of dollars in ediscovery cost. Other cases absolutely do. But you need to communicate with the client about that. John, still on?

John Austin: Yes. I’m here. I’m wondering whether we should also talk about call shifting or each party kind of bearing their own burden for the scope of discovery they want. And any thoughts about that?

David Seserman: Right. I think we should talk about it. And I – and I think you need to talk about it.

I have – the default in many of federal courts is the party that receives the request bears the burden of in some cases imaging, multiple computers, multiple remote storage devices. And so just responding to requests can easily run into the tens of thousands if not more dollars. If that’s something that – you know that’s just the cost to produce and the cost to image.
If you are – if the other side wants something, I think you need to have a discussion – this includes third party discovery – about who is going to bear the cost. And that again, I – I’ve – I think of some recent cases that I’ve been dealing with, one third party discovery request in case I’m working on. The other side came back with a very detailed analysis and said, “This would be unduly burdensome, judge, because we’ve estimated it would take x hundreds of hours. And the cost would be so many thousands of dollars. And we would need so much time to review this kind of data they are looking for.”

versus response that says, “Objection. This is an unduly burdensome request.”

And depending on which judge you are in front of and what her sophistication level may be with ESI, you may get different answers. But it’s – I think the more detailed you can get on a discussion, the more granular at a level of what does burdensome mean, how much data are we talking about, how can it be produced, the more effective a discussion you can have with the other side with the court. And you can get into a realistic (decision) about cost shifting because if you are on the requesting side and your side says, “We’re willing to get that for you. But understand it’s going to take two weeks of dedicated time from our – from our outside IT people. They charge $200 or whatever it may be an hour. And are you willing to – are you willing to incur that cost.” that may modify the request.

And so, yes, I think there is a lot of opportunity to discuss what is appropriate cost sharing no different really than when you have a special discovery master in a case where you say, “Look. There – there’s a lot of issues here. We requested a discovery master under Rule 53 be appointed because we’re going to need a lot of time with some – with the third party guidance.”

And the parties agree that it would be efficient to split that cost. So, yes, have that discussion.

John Austin: And know in – you’re absolutely right. The present paradigm for discovery is the (profunder) gets the luxury of asking for everything again with that, with the warning that you could shoot yourself in the foot if you ask for too much. But then the respondent is – has that burden of producing and add its cost, a
significant amount of ESI that again may not be proportional to that, to the case. Is it realistic to look at the judge and say, “Hey, we need to” – if they don’t agree to a call shifting, that the judge would require them to pay those things or pay for that research?

David Seserman: I think if I’m representing the party that doesn’t want to incur that cost, yes, it’s realistic to go to the judge. But there are different – judges are all human beings. Most were once trial lawyers. And they’ve had various experience with ESI.

I had a case – last summer, I was in front of a judge. And I looked at the judge and said, “Your honor, I’m not sure how familiar the court is with ESI.” He proceeded to tell me that until he went on the bench 10 years before then he had practiced civil litigation for 20 years. And therefore, he was very familiar with it. And you know in a – in a gentle way, I had to approach the subject that, “Well, your honor, ESI has changed significantly in the last 10 years.

What's interesting with that is there is – there is so much email these days as part of ESI. And there is such a propensity to attach documents, spreadsheets, whatever it may be to emails. That I’ve seen a number of cases recently where in particular with third party discovery you can effectively get most of what you need simply by asking for emails with attachments. And so you can actually narrowly focus your requests to avoid, should we say, having yet the third party incur the burden of looking through all of their files for copies of letters, copies of spreadsheets, copies of PowerPoint decks when in fact they would have been emailed back and forth and you’re going to receive it that way anyway. So you know in some ways, modern technology has allowed us to if we think about it at times focus on what we need in discovery.

John Austin: Now, if a party is – get pushed back from opposing counsels, says, “No. We’re not going to pay for your guy to – or your IT guy to search you. But we can send our own IT guy and make a – make a search or conduct a search for those on your client’s systems and hardware and hard drives.” is that something that can be acceptable?
David Seserman: I think at the right circumstances, yes. But by my sense and my experience is that it’s not. It is I’ve seen very few lawyers or clients to say, “Wait a minute. You’re going to – you’re telling me that the other sides retained call to expert or IT guy, is going to come in and have unfettered access to my system.” And then it becomes who are they going to produce it to, how is it going to be reviewed.

On the other hand, what I – what I have seen effective is an agreement by both sides to use a neutral IT service, to use a neutral forensic service and say, “Look. We are going to utilize XYZ company for the forensic gathering and hosting in this case.” And there can be significant savings when that occurs.

And at least, I know in Colorado, there are several forensic computer companies that seemed to be very well respected by members of the bar. And so I – you know I’ve seen a number of situations where we readily agree on the company or companies. They’re going to do that, which results in significant cost savings because they’re planning the same protocols.

John Austin: David, I have to agree with you because I’ve had that same experience of using both one firm and using competing firms. And with competing firms, I know that both sides spent extraordinary amounts of money on this where it could had just been shared with one IT firm.

I think there’s a critical thing as well. And that is you do want to check the reputation of your forensic IT company. Just make sure that they’re on the up-and-up.

Tell us a little bit more – we’re still waiting for Patricia. She got cut off.

Patricia McCabe: I’m here.

David Seserman: OK.

John Austin: Just one minute. So – great.

David Seserman: Hey.

John Austin: Glad to have you back. OK. I didn’t want to want to be …
Patricia McCabe: Thank you.

John Austin: … ignore you. Your – we’ve been talking about using forensic IT companies either shared or competing. Your experience on this and what you’ve seen in the past?

Patricia McCabe: Again, I think it’s going to be determined by what your case is and what the issues are. But I have used outside services because the cost and burden to a small firm. I think if you – there are some excellent companies out there that can take the burden off of the attorney to have to review the thousands of documents. I think they can also help you limit your costs as you maximize your time. I find that in a lot of my cases, there are tens of thousands of documents. And the burden are in myself, are the associates in my office is just too great.

So we use – we use either individual IT people. We also use some of the big companies that are out there depending on the size of the documents involved. And I think if you use some good document review companies, you can also organize your data in a good way. The IT people can have a good understanding of what it is you’re trying to seek from their assistance in the case.

John Austin: OK. And, Patricia, let me follow up with this. If – in your experience, when you’re using these outside companies, are the agreements in – again, we’re talking about – this is a portion where we’re talking about informing and keeping our clients. So where – what the cost will be is, well, what the process is.

Do they – do you set up agreements between the vendors and your clients? Or are they with you? And are you responsible for the bill in the event that it doesn’t get paid? How is – how is that best handled.

David Seserman: Yes.

Patricia McCabe: And that – again, that depends on my client. But the majority of the time, the bill is with my office. And I am responsible for paying the cost. And my
client understands that with recovery, these costs will be subtracted. But the key is, one, I still have to have my client’s permission. And I have to educate them on the significant costs that are going to be involved.

And, two, I have to work very closely with my outside vendors so that – so that they not only – don’t shock the clients but they don’t shock me and the bill. I wanted something that is reasonable to what it is I’m requesting. And I think that requires me to have more of a hand in hand knowledge and working team with my vendor because I don’t want to build. It’s absolutely astronomical that I’m on the hook for pending the results of my litigation.

John Austin: OK. David, your position on these contracts …

David Seserman: Great.

John Austin: … and making sure the bills are paid?

David Seserman: When possible, I – my preference is to have the client contract directly with the IT or forensic vendor. That being said, it’s not always possible in every case. It depends on the size of the data. It depends on the client, depends on a number of different factors. But even if the client is paying the invoice directly, as a practical sense, since I’m the one who is going to be working with that IT vendor down the road, if the client for whatever reason isn’t paying the bill, that I may as a practical sense have an IT vendor looking to me saying, “We need to be paid. And if your client’s not paying, we expect you to step up regardless of the existence of an agreement.” And if I want to do business with that IT vendor in the future, that just may be a practical reality I face.

John Austin: And you’re absolutely right. It may depend on whether – and I’m sure a lot of – when you’re talking about disability work – Patricia, correct me if you’re – if I’m wrong. But that may be on a contingency fee basis, I could see where – if I’m taking a contingency fee case, that I would cover the cost. But if it’s a complex business litigation, then it may be one of those situations where the contract is directly with the IT forensic company. So it may be …

Patricia McCabe: Correct.
John Austin: … an off space. Yes. Let me …

Patricia McCabe: That’s correct.

John Austin: … let me ask this. And this is going to vary from state to state and something that I’ve just gotten involved with. And that is are these costs – are these costs of bringing in third parties to do discovery – are they recoverable as a part of cost in litigation. For example, if you are awarded cost whether it be – in North Carolina, it has to be designated by statute. But as for normal cost, these would not be included in normal core cost or costs that are recoverable under our statutes.

Are you all familiar with anything where you’ve been able to get reimbursed because you’re the prevailing party for these third party vendor costs? David.

David Seserman: It’s certainly something I would try. But as you know, depending on the – on the statute in a given state, you may go nowhere in it. But it is – it is absolutely something that I would present as a prevailing party. And depending on the case, might be willing to try to take it up at an appellate level because, well, that is – that is something that is going to have to be wrestled with in the future because these costs can be so significant.

You know if you have a case that goes on for, let’s just say, two years, and as part of that there are several hundred thousand dollars’ worth of IT, ESI costs, yes, that that’s something that I think a prevailing party is going to want to receive but may in many cases, in many situations not receive. And then you know even if there’s an award of cost, it becomes what are – what is reasonable. And that goes back to the being able to explain to a judge, a magistrate, whoever it may be why these costs were very reasonable. And if you’ve begun that conversation early on with your client, you’re going to have a better understanding of why it is other than why (shoot) the bill I got from the vendor.

Patricia McCabe: John.

John Austin: Patricia, what about your area?
Patricia McCabe: In California, it’s not part of the statute. However, the courts are understanding. And again, it depends on who your judge is. And often, I do get pushed back from opposing counsel, especially bigger firm that indicates that this is simply the cost to doing business. And I have been more successful trying to resolve those costs directly with counsel. Often, I have to – I reduce what I’m seeking. But they do understand it’s a cost to doing business.

And depending on your judge, they may be willing to provide a portion of it. I have yet to find a judge that will grant all costs especially related to some of the IT professionals because they consider that to be outside of the actual cost associated with my case if I have IT person looking for a particular thing. So again, it’s really going to depend on your judge. And as …

John Austin: Well …

Patricia McCabe: … David mentioned earlier in the case, I think there’re some education that sometimes have to go into working with the bench because depending on your judge …

John Austin: Right.

Patricia McCabe: … and depending on their knowledge of ediscovery, they may – they may not have the same facilitation and understanding even though they handle these cases all the time. So depending on that, there might be a particular issue where certain scope of your case that it is you can bring out that will trying convince the judge that this was the use of the IT person or the use of the outside vendor was extremely critical to proving your case.

John Austin: Well, and just as we had earlier talked about cost shifting and that this is a developing area of the law, I think that we’re going to see that bringing in third party vendors. And that as being reimbursable as cost or attorney’s fees may also be a developing area of the law.

Seems to me that the argument that if you do hire a third party to help you with the – with the management of this data is going to be cheaper than the
attorney and the attorney’s billing rate to do that, that needs to be impressed on the court. And as David says, you know it may take an appellate case before this is decided. Or it may take a change in the statutes themselves. But eventually, I think the courts in the system and maybe the legislatures around the country realize that it – it’s cheaper litigation if we get assistance with this electronic data that be reimbursable versus the attorney (technical difficulty), these and trying to do it themself. I think that’s an argument to be made.

Again, as a small – you know as folks in small firms or in the solo practitioners, we tend to want to take these things on ourselves, which we’re not all that necessarily equipped for or specialized in. So we need to be able to reach out. And it would end up being cheaper as the cost.

That’s my segue into our third issue here. And that is asking for help and third party vendors, others, other law firms or other practitioners to help.

Patricia, I’m going to ask you to kick us off on this section. Who do you want …

Patricia McCabe: I …

John Austin: If you need help, where do you go to?

Patricia McCabe: … I use a couple sources. I do use contract attorneys to help with ediscovery. There are some excellent individuals and some excellent small firms that having much greater facilitation with IT information and with electronics. So I do outsource to them.

I also use – there are some very good litigation paralegals that I contract with. And last but not least, I use a couple of the big – depending on the volume the documents we’re talking, I use some of the outside vendors that can get it done quicker. And even though the cost might be more, it’s – it can be done quicker. And it seems to be especially with tens of thousands of documents. You’re talking about an efficiency factor as well.

So it really depends on what it is you’re seeking and what is the size, I think from my point of view, what is it I’m seeking and what’s the – what’s the
result that I’m going to get. And then I bring in some expertise to work on it depending on the level of production.

John Austin: David, your thoughts?

David Seserman: I agree with Patricia. To add to that, you know I also try to put in place ESI protocols whether it’s required by the court or agreement of counsel early on to address how we’re going to handle this volume of documents. So you can cut down drastically the number of documents that have to be physically reviewed by a lawyer if you could agree on for instance search protocols, just which search terms are going to be used against this huge amount of data to reduce down what has to be – to be reviewed.

You can also – if you don’t know what technologies review is, consider employing that in the right kinds of cases. But, yes, figure out …

(Lyn Howell): Yes. But …

David Seserman: … what the bulk is, how you can reduce it. You may – you may miss some of it. But that’s part of proportionality and discussing that maybe every single one of them, 2 million documents doesn’t need to be reviewed but back to what Patricia said, yes, as a – as a small practitioner, sole firm affiliate with paralegals with contract attorneys with co-counsel. And I think …

(Lyn Howell): Thank you.

David Seserman: … we’re at about 11:45. Right, (Lyn)?

(Lyn Howell): Yes. That’s time. It’s the bewitching time. Operator, would you please give the instructions so our callers can ask questions of our panel please?

Operator: Thank you, Miss (Howell). To all the participants, at this time, I would like to remind everyone in order to ask a question, press star then the number one of your telephone keypad. Again, press star then the number one on your telephone keypad. We’ll pause for just a moment to compile the Q&A roster.

(Lyn Howell): OK. John, you can finish up real quickly while we wait for our question. Take it from there.
John Austin: Again, I want to thank everybody that has participated in this. This has been a joint presentation by the GPSolo litigation committee as well as the ABA Section on Litigation Trial Practice Committee. I think we hit some great points here and ending up with a siren outside of my office apparently. But we’ll …

David Seserman: It’s all right.

John Austin: … we’ll start taking questions now.

David Seserman: John, as we’re waiting – this is David – I want to point out that for our listeners there are number of free resources that are available for them to educate themselves on this whole area, in particular ESI. The ABA certainly has a number of resources that are available to members. You know you mention I’m a member Sedona Conference. Sedona also has resources that can be very educational for especially attorneys who haven’t had to deal with this before but will.

John Austin: And I think that’s a great point. So reach out. If you’ve not – if this is – if you’re either new in the practice or a case has been brought to you where there’s going to be significant ESI and you’ve not done that before, reach out and get help. There’s a – there’s – now, does The Sedona Conference have forms? Or do they have guidelines that you could go by that would – that would help you out in that regard?

David Seserman: Yes. The answer is lots of publications. But there are some Q&A guidelines. There are – there are some forms. There’re some long (Credeces). That’s – the reason I mentioned that is that a lot of judges had become familiar with Sedona Conference. And so they will say apply the Sedona Principles.

And so if you can refer to them, it’s a resource, again American Bar Association. And now – and now, if you can address – but you know there are a number or (Steve) – there are number of tremendous resources there that allow somebody to self-educate fairly quickly.

John Austin: Now, at our – do we have a question?
Operator: Presenters, there are no further question at this time. You may now proceed with your presentation.

Melanie Bragg: And what I was …

John Austin: That’s OK.

Melanie Bragg: … going to say, John – what I was going to say, David and John, is that with the new membership model that the ABA is rolling out, I don’t know if everybody’s gotten their postcard. But I’ve gotten the first postcard today.

But one of the main things that’s going to happen with the new membership model and what the ABA is doing is they’re going to be providing a whole bunch more content. Rather than having it be behind the veil, it’s going to be available to our members and at much wider format across sections and forms and stuff. So that’s going to be very, very exciting about the availability of information.

(Lyn Howell): Good.

John Austin: One thing I’d like to express is again we’re going to have a joint meeting between the general practice, GPSolo and section litigation in May. We are presenting this on Thursday at 10 am. There’ll be more information there. There’ll be a PowerPoint presentation as well. And we’ll also have (Jeff Garner) who works for a firm, a larger firm that also provides assistance in this area. They’ve had so much ESI discovery that they’ve basically set up their own practice in assisting both large and small firms in this – in this area. Anything more that, Patricia or David, you’d like to add?

Patricia McCabe: There is. I think – and I apologize if you talked about it while I was away. I think one of the things that are – that you have to do is also educate your staff. You do have to educate your legal assistants, your paralegals to help you understand and help work with the data that’s being requested, the data that’s being received. I think it’s worth it if you take some time and have your staff be educated on the ediscovery process so they have a better understanding of
where it is you’re going. I think that can be very beneficial to a small practitioner and a solo practitioner.

David Seserman: This is David. I agree with you 100 percent. It is very important to educate yourself. Mean the title of this podcast is Big Firm Discovery on a Small Firm Budget. And that means that the small firm lawyer has to educate herself on what is out there. And you know I mentioned Sedona, I mentioned the ABA. I should also mention there are a lot of discovery review platform vendors that are out there. My experience with them is they are more than happy to educate you on their product. They don’t charge you for that education because it’s a sales pitch. But it is – it’s very important that you as a – as a small firm practitioner having a baseline understanding of what the various ESI platforms are out there because there can be significant costs.

And you don’t necessarily want to be driven to the most expensive with the most bells and whistles discovery review platform when the case doesn’t necessarily warrant it. And the only way to protect you – protect your client to advise your client is to educate yourself.

John Austin: And, David, you’re absolutely …

Patricia McCabe: I agree wholeheartedly.

John Austin: … right there to they’re more than …

David Seserman: Well …

John Austin: … willing to talk to you about this. And we’ve been focused today on electronic – we – I think we focused primarily on electronic stored information. But there is also ways to save with depositions by doing video depositions versus in place depositions. Certainly saves you on (triable).

And there is – and this is all done over the web and with computers. So we are entering a whole new era of litigation.

And as – especially if you’re in a small firm, you need to keep up with the technology. You can keep up with it with just looking at what’s out there and
asking people – asking these vendors to give you a presentation. I think that’s an excellent point.

David Seserman: And your thought being upon me, not every deposition has – you don’t have to have a live transcript of every deposition. Just because the other side is ordering it doesn’t mean you have to order it. Or doesn’t have to reproduce to expedite it. You don’t necessarily have to videotape every deposition. There are certain reasons to and not to. But again, that’s setting a budget with a client that we talked about earlier. I think it’s real important to review that because there’s pros and cons to all of those expected.

John Austin: Absolutely. Well, given no other questions, I think that this is where we may close the session.

(Lyn Howell): OK. Melanie, it’s yours to close.

Melanie Bragg: Yes. I was just going to say thank you for everybody for being here. Thank you for agreeing, John and David and Patricia and all the other members of this amazing channel. It’s just going to be – I can’t wait to see that in action. So thank you for agreeing to do this brown bag today. Thank you for coming to New York and giving the program and join the conference. And I hope that people listening will look at it and see of that coming and having some fun and learning and just being together with us and talking about things.

That’s one thing that us solos don’t do. And that is talk to each other. It’s kind of like we keep our little secrets. And it’s really good to have the exchange of information so that we can all get ahead and serve our clients and give our clients the best access to justice.

I really think that small firms have – we’re very agile. We’re nimble. And we just know – we – we’re always cost – focus of – focusing on cost. So I just think that we have a lot we can share with them and back and forth. So I hope to see everybody there and hope everybody has a great day.

John Austin: Thank you.

Patricia McCabe: Thank you.
Operator: This concludes today’s conference call. Thank you for your participation.

(Lyn Howell): Thank you.

Operator: You may now disconnect.

Patricia McCabe: Thank you.

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