Present at the Creation

Our picks for six of the most important e-discovery trailblazers.

Clearly it took a village to define and create today's electronic discovery industry. Ever since the sector's early days, marked by the litigation following the Exxon Valdez oil spill in 1989, a series of lawyers, consultants, archivists, and judges have each played key roles in outlining processes, setting standards, defining the scope of e-discovery, and anticipating future trends. Some, like K&L Gates partner Martha Dawson and U.S. District Court Judge Shira Scheindlin, were early and vocal advocates of a robust role for e-discovery. Others, like Jason R. Baron of the U.S. National Archives and Records Administration, U.S. Magistrate Judge Andrew Peck, and U.S. District Court Judge Paul Grimm, focus on narrowing the scope and improving the efficiency and cost-effectiveness of e-discovery requests. Another group dived deep into the long process of creating uniform standards and procedures for e-discovery: This is a diverse group, including such people as consultants George Socha and Tom Gelbmann, Sedona Conference founder Richard Braman, and U.S. District Court Judge Lee Rosenthal, who chaired the Judicial Conference Advisory Committee on the Federal Rules of Civil Procedures during a crucial period beginning in 2003.

The Top 50 Innovators in Big Law in the Last 50 Years

MARTHA DAWSON
PARTNER, K&L GATES

By Alan Cohen

DAWSON SAW IT all coming—not just how e-discovery was going to change the practice of law, but how it could also change the business of law. Before most lawyers were using email, she was tweaking—and sometimes inventing—processes to ensure that her firm was getting both sides of the equation right.

Dawson's foray into e-discovery dates back to the early 1990s, when her firm—then known as Preston Gates & Ellis—represented Alaska in the *Exxon Valdez* litigation and Microsoft Corporation in its tangles with the U.S. Department of Justice (the latter eventually expanding into the famous antitrust trial of 1998).

Both Exxon and Microsoft had adopted early email systems, meaning that Dawson, a litigator, had to get up to speed on electronic information. With the learning came a revelation. As electronic systems caught on, the volume of documents would likely skyrocket—and so would the costs of discovery. The traditional approach, where associates—and even partners—reviewed documents, had to go. So in 1997 Dawson founded Preston Gates's e-Discovery Analysis and Technology group, or e-DAT. It was considered to be the first of its kind—a practice group dedicated exclusively to e-discovery—and it was innovative, using project-based attorneys for review. These lawyers worked only on e-discovery and could be billed at lower rates than associates.

The impetus behind e-DAT wasn't just to serve existing clients. "It became clear that there would be opportunities to expand the client base," says Helen Bergman Moure, a former partner who worked in the group for more than a decade. She is now at her own e-discovery consulting and law firm, Lex Aperta.

Dawson wasn't done, however. In 2000, frustrated that the available technology was ill-suited for the burgeoning volume of electronic information, she and several partners—Martin Smith, David McDonald, and then–managing partner Gerald Johnson—decided to develop their own. They brought in veteran software developer Skip Walter, whose team spent weeks observing Dawson's group and identifying where automation could boost efficiency (a 15-by-3-foot array of sticky notes, known as "Martha's Wall," detailed every step of the e-DAT process). The resulting software, called Patterns, worked so well that Preston Gates spun off a separate company, Attenex, to market it. (In 2008 Attenex was sold to FTI Consulting Inc. for $88 million).

By coupling the technology with its lawyer-review model, Dawson says e-DAT could offer clients savings of over 50 percent compared to traditional methods of document review. Not surprisingly, other firms have since created e-discovery groups, and vendors have embraced project-based attorneys as a way to lower costs. For e-DAT that means competition. But it also means that Dawson had it right. "What the vendors saw," says Moure, "was that the model worked."

GEORGE SOCHA
SOCHA CONSULTING
TOM GELBMANN
GELBMANN & ASSOCIATES

NINE YEARS AGO, Socha and Gelbmann surveyed the e-discovery landscape and discovered a mess. Every practitioner, every vendor seemed to have a different definition of what e-discovery meant. "It was a real issue," says Gelbmann, a former law firm CIO. With no standards, and no common framework that people could agree on, it would be near impossible to hit on best practices.

So Gelbmann and Socha—a litigator turned e-discovery consultant—decided to create that framework. Organizing a sort of modern-day salon—substituting e-discovery for art and literature and the St. Paul Chamber of Commerce for a Parisian drawing room—the duo invited vendors and lawyers to Minnesota, where they were based. Some three dozen people showed up in May 2005, and a day and a half later, they had hashed out the beginnings of a road map: nine "boxes" representing the essential steps of the e-discovery process, from information management to collection to production and presentation. When the meeting ended, the members kept at it remotely, using email and conferences to fill in the boxes and "put some meat on the bones," Gelbmann recalls.

The result—the Electronic Discovery Reference Model—was published in January 2006. EDRM's impact was profound. It quickly became the de facto standard for describing the e-discovery process, helping lawyers better understand the steps and where different practices and technology solutions fit in. (At technology trade shows, lawyers could be seen walking around with the EDRM diagram in hand, asking vendors which box their products applied to.)

The stages it describes have also helped judges frame their writings on e-discovery. "When George and Tom published EDRM, judges, practitioners, and service providers finally had a common framework within which to discuss and consider e-discovery," says Christopher Boehning, a litigation partner at Paul, Weiss, Rifkind, Wharton & Garrison.

Socha and Gelbmann anticipated that their EDRM project would last a year, but it continues today (with twice as many attendees, the group now commandeers a St. Paul hotel).

"George [Socha] and I are like the referees," Gelbmann says. "At the first meeting, one provider asked, 'You really expect us to work together?' We said yes. The question was never asked again. To me, that's very rewarding. They may be competitors, but they are all working for the same goal."

JOHN TREDENNICK JR.
CATALYST REPOSITORY SYSTEMS

A LOT OF LAWYERS have become evangelists for technology; Tredennick is more of a seer. First as a litigator at Denver's Holland & Hart, then as the firm's CTO, and finally as CEO of Catalyst Repository Systems, Tredennick early on spotted the potential of the big tech trends: the Web, the cloud, and Big Data. And he ran with them.

Tredennick was already well-known in legal tech circles in the mid-1990s—having written books on litigation and computers—when he had his first eureka moment. He had built a docketing system, called EasyDocket, for Holland & Hart, but he was frustrated by the complexity and problems of connecting 10 offices together.

Tredennick had heard people talking about the Internet—a technology that for the legal profession, at least, was still rela-tively new and unexploited. This, he realized, was the answer. Tredennick put a Web-based interface on his firm's docketing system so that location became irrelevant. Any Holland & Hart lawyer with Internet capability could access it, no matter where he was. It's a routine concept today (think hosted services and the cloud). But this was 1996.

Tredennick saw that the same idea could be applied to documents, with online repositories facilitating access not just for Holland & Hart's lawyers, but for clients and cocounsel. Tredennick was a pioneer in creating early law firm "extranets"—Holland & Hart's first one, created in 1998, was centered around a dozen or so oil and gas cases and would ultimately have more than 300 outside users. "He was ahead of the curve by a mile," says Mark Brennan, counsel at Bryan Cave. "There were tools out there, but none of them were Web-based. John was insightful and foresightful in leading that effort."

In 2000 Holland & Hart and Tredennick spun off their secure, Web-based repositories as a separate business—called Case-Share. That eventually became Catalyst, with Tredennick and other investors buying out the firm's share. From there, Tredennick looked into his crystal ball and, once again, got it right. Anticipating dramatically increased data sets, he leveraged cloud and distributed storage technology, and moved away from the highly structured forms that data traditionally had to be stored in. Instead, he designed flexible, scalable systems. To put it in layman's terms: It's the approach that Google hit on, too.

JASON R. BARON
U.S. NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

IN 2002 BARON began a quest—or, one might say, obsession—to find an efficient way to retrieve relevant electronic information. As director of litigation for the U.S. National Archives and Records Administration, he was asked to search tens of millions of White House emails as part of a discovery request by big tobacco companies in a RICO lawsuit against them. "It was definitely the dark ages," Baron recalls. "If you picked keywords ad hoc, you certainly didn't get all the relevant documents, and you got a lot of false positives . . . you got junk."

Baron's quest for a better approach led him to the Sedona Conference, an industry group, where he edited several publications on e-discovery practices. It also led him to cofound, in 2006, with University of Maryland professor Douglas Oard, the Legal Track at the Text Retrieval Conference (TREC).

TREC Legal Track became the proving grounds for the latest thinking in search and retrieval. It created a hypothetical universe with fictional complaints, fictional requests to produce documents, and databases of millions of documents (for these, TREC used public collections from cases involving tobacco companies and Enron). Participants would complete the discovery requests using different retrieval methods. The idea was to quantify how well the approaches worked. After all, if no one knew how accurate a method was, how could a lawyer—or a court—trust it?

Early on, TREC—an annual undertaking that continued for six years—showed the limitations of keyword search. In the second-year mock production exercise, 78 percent of responsive documents were missed. Results were also found to improve, for example, when humans were kept in the loop and provided feedback to automated systems (helping them to "learn").

The TREC studies were influential, too, in helping technology-assisted review win judicial approval. Law review articles by Maura Grossman and Gordon Cormack—who worked on the TREC project—were quoted in the seminal decision of *Da Silva Moore v. Publicis Groupe*. "TREC was the most exhaustive objective comparison about legal search methodology ever undertaken," says William Butterfield, a partner at Hausfeld and a fellow member of the Sedona Conference.

By quantifying the effectiveness of different methods, TREC helped to open lawyers' eyes to the limits of keyword search and the potential of other techniques. "I think judges have now gotten this," says Baron. "They are recognizing that there are methods like predictive coding and other forms of technology-assisted review that are doing at least as good a job as more traditional approaches in terms of overall accuracy, and at a much faster rate."

RICHARD BRAMAN
THE SEDONA CONFERENCE

EVEN BEFORE FOUNDING the Sedona Conference—a think tank on law and policy—Braman was not the typical corporate lawyer. Along with practicing antitrust law (and serving as cochair of that group at Minneapolis's Gray Plant Mooty), he also ran a well-known Twin Cities jazz club. Relocating to Sedona, Arizona in the mid-1990s, Braman went on to have an anything-but-typical impact on the law, too—specifically, on the rules for e-discovery.

Those rules were conspicuously absent in 2002, when the Sedona Conference brought together the best minds in e-discovery to, in effect, create them. Led by a former partner of Braman's from Minneapolis, Jonathan Redgrave, Sedona's first working group (there are now 10, on a variety of legal topics) published

the groundbreaking "Sedona Principles"—14 guidelines for the e-discovery process with commentary chock-full of best practices. Just as important, the Principles offered a guide to how parties should communicate with each other during that process. From the start, a prescient Sedona Conference saw that cooperation would be vital for efficient and cost-effective e-discovery.

Less than a month after the first draft was published in 2003, the "Principles" were cited by the federal Advisory Committee on Civil Rules Discovery Subcommittee in its report on electronic discovery. A month after that, it was cited by Judge Shira Scheindlin in the landmark Zubulake e-discovery case.

Intended to supplement the Federal Rules of Civil Procedure, the Principles instead

helped shape them: The 2006 amendments to the FRCP tracked much of Sedona's work. "It served as an initial guide to the judiciary as to how to think about electronically stored information," says Jason Baron, a former cochair of Sedona's working group on electronic document retention and production. "You could say that the Principles definitely jumpstarted the 2006 amendments."

Nor was Braman simply the organizer who brought the right people to the right place at the right time. "You'd have a room of 120 lawyers and judges, and he'd be walking around, driving the conversation, asking questions and pushing people," says Paul Weiss partner Boehning, who is also a member of the working group. Braman "played the role very effectively, and he kept us all on message."