



Wilson Sonsini Goodrich & Rosati
PROFESSIONAL CORPORATION

In-house vs. Outsourced Discovery Management

William Kellermann, Esq.

Electronic Discovery Manager

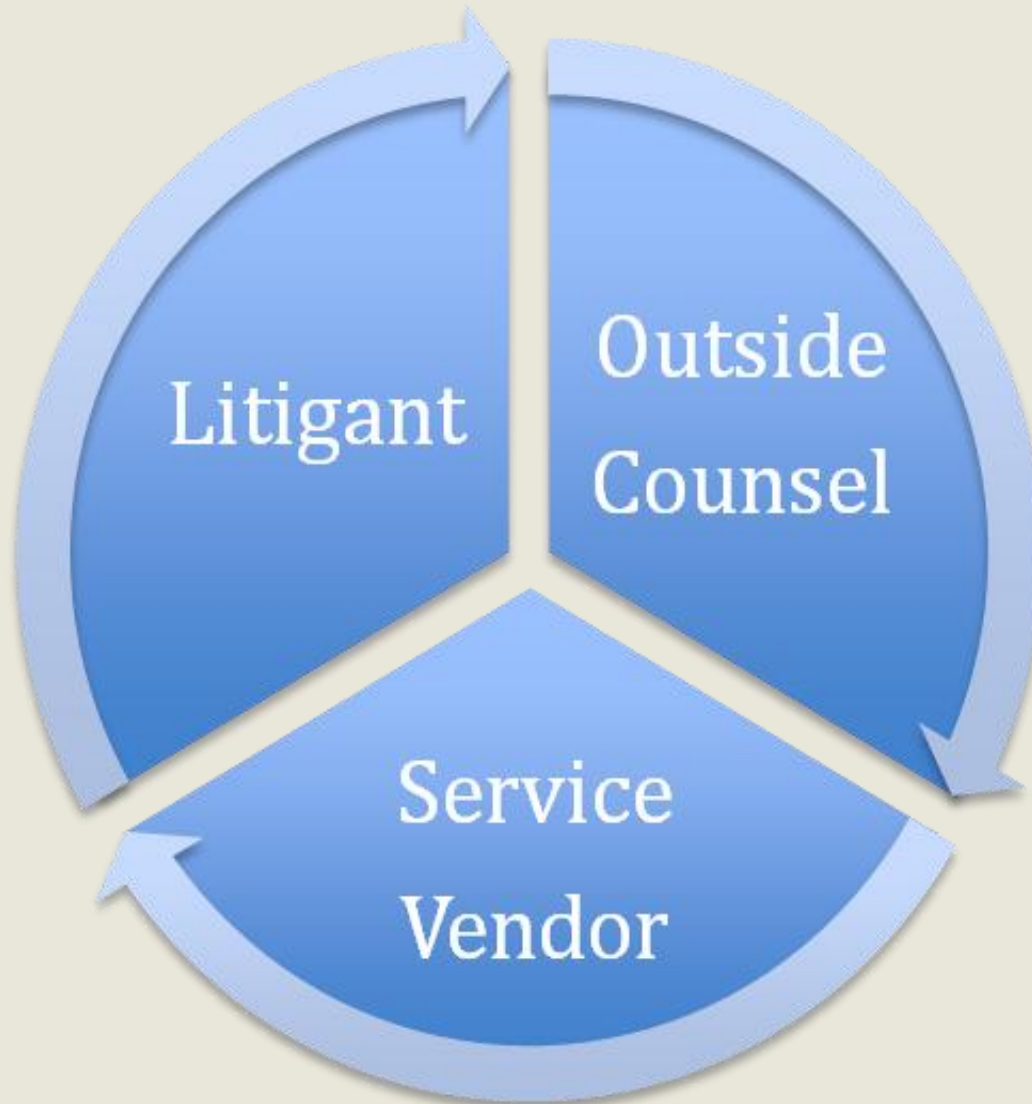
May 15, 2009

Have you heard an “expert” say...

- “Companies should never collect their own data!”
- “Companies should never process their own data!”
- “Companies should never host their own data!”
- “Law firm employees should never collect their client’s data!”
- “Law firms should never process client data!”
- “Law firms should never host discovery data!”

WHY or WHY NOT?





What are the options for Litigants?

- Ad hoc outsourcing
 - Vendors
 - Law firm specialty operations
 - Law firm paraprofessionals
 - Lawyers
- Single-source or preferred vendor outsourcing
 - End-to-end
 - General contractor
 - Specialty operations
- In-house “DIY”
 - Dedicated resources
 - Ad hoc resources
- Combo-plate

What are the options for Law Firms?

- Exclusive, ad hoc reliance on support vendors
- Exclusive reliance on dedicated or preferred vendors under MSA
- Internal specialty operations groups
 - Non-exclusive
 - Ancillary business
 - Internal, captive full-service support
- Paralegals and IT
- Lawyer DIY
- Combo plate

What are the options for Support Vendors?

- **Businesses:**
 - ILM Products
 - End to end services
 - ▶ EDRM Touch points [www.edrm.org]
 - Specialty services
- **Markets:**
 - Corporate MSA for Fortune 500
 - High-volume specialty matters
 - Ad hoc services for Fortune 2000
 - Regionalized and Local services

Why in-house?

- Cost containment
- Risk mitigation
- Efficiency
- Effectiveness
- Control

Why Not in-house?

- Investment Cost Barrier
- Cost-center budget constraints
- Shared-cost
- Shared risk – ringed defense
- Learning curve and lack of expertise
- Moore's Law



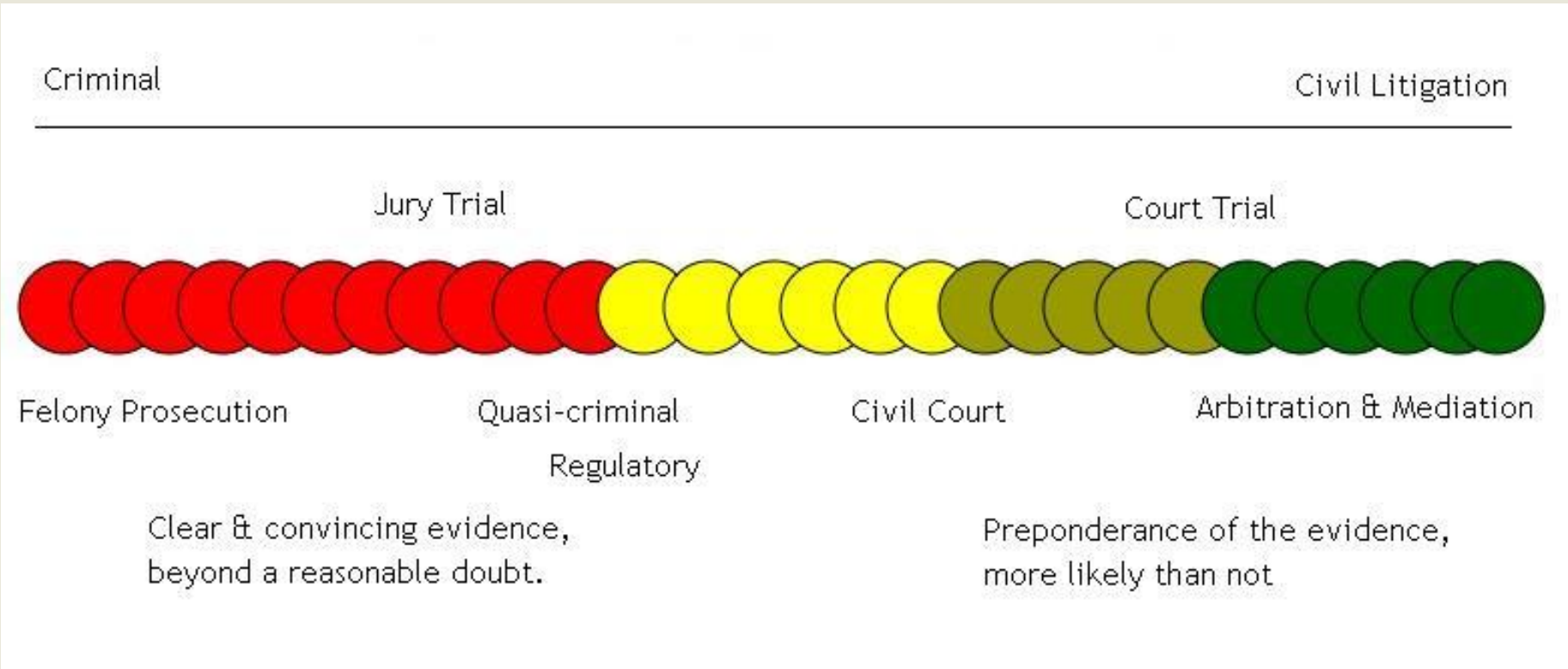
Dispute resolution is a forensic exercise.

“Forensics” is:

- The recognition, collection, identification, and interpretation of evidence, using the application of an **accepted methodology** for criminal and civil law, or regulatory purposes.

Sifting artifacts to establish facts.

Evaluating Evidence



Mitigating evidence risk

- Authenticity and veracity
 - Vital records
 - Business records
 - Non-record business held content
- Weight
- Privilege
 - Waiver
- Management Prerogative
 - Usefulness of metadata

Technology Risk

- Proprietary technology
 - Lagging market – leaves too much behind
 - Leading market – Untested
 - Black box vs. Glass box
- Off the shelf technology
 - Broad vs. narrow adoption
 - Strength in numbers
 - Scope vs. limitations of offering

Who's Doing What?

- Corporations
 - Identification & Preservation
 - ▶ ILM Initiatives
 - ▶ Content and records management
 - ▶ Archiving initiatives
 - eMail is low hanging fruit
 - Structured data comes next
 - Unstructured data still a problem but fast coming under control
 - ▶ Legal Hold Systems
 - Notification systems are maturing
 - Index and flag systems are in infancy but developing rapidly
 - Collection
 - ▶ Information security methodology is mature
 - ▶ Index and crawl systems
 - ▶ Manual image/copy systems

Who's Doing What?

- Corporations
 - Culling & Filtering
 - ▶ Often now done on collection
 - ▶ Archive and preservation systems used to cull
 - ▶ ECA Tools taking hold as culling tool
 - Processing
 - ▶ Some internal operations using traditional normalization tools
 - Generating 'native-link' deliverables
 - Generating TIFF image deliverables
 - Generating combination deliverables
 - Review
 - ▶ Limited adoption
 - Production
 - ▶ Very rare, except with third-party subpoenas

Who's Doing What?

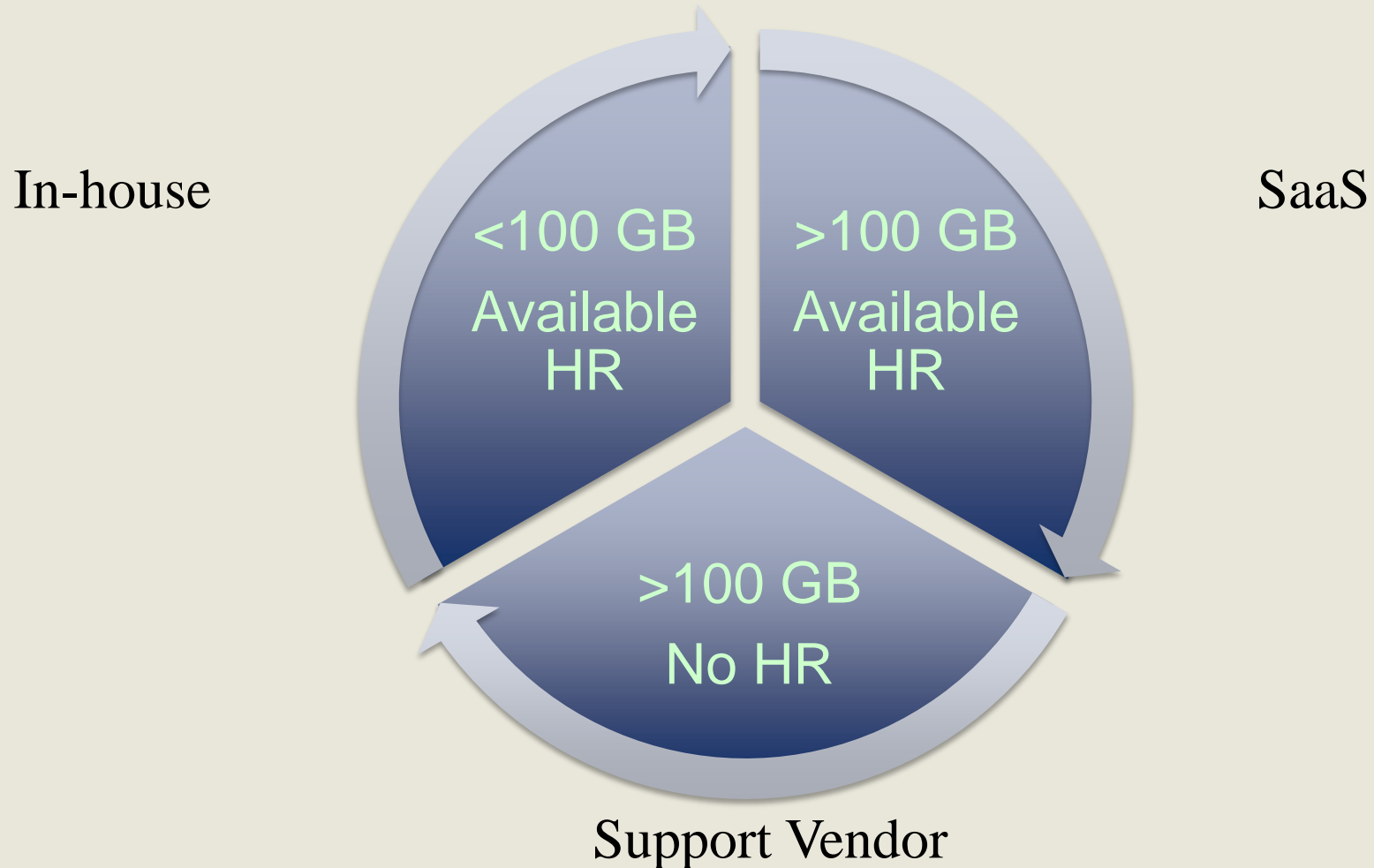
- Law firms
 - Identification & Preservation
 - ▶ Labor intensive = costly process
 - ▶ May or may not be fully leveraged
 - ▶ Tend to be overly broad initially compounding cost problem
 - ▶ Legal Hold limited to notification and often ad hoc

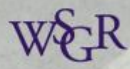
 - Collection
 - ▶ Preservation sequestration
 - ▶ Wide-range of competencies
 - CCE
 - IT
 - Paralegal
 - DIY Lawyer

Who's Doing What?

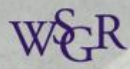
- Law Firm
 - Culling & Filtering
 - ▶ Often now done on collection
 - ▶ ECA Tools taking hold as culling tool
 - ▶ But still primarily keyword driven
 - Processing
 - ▶ Some internal operations using traditional normalization tools
 - Generating 'native-link' deliverables
 - Generating TIFF image deliverables
 - Generating combination deliverables
 - Review
 - ▶ Based on inadequate, dated technology
 - ▶ Some adoption of analytic assisted and auto-review

Escalation Strategies





What are your limitations?



Questions?

William Kellermann, Esq.

Electronic Discovery Manager

Wilson Sonsini Goodrich & Rosati, P.C.

wkellermann@wsgr.com