

Building a Successful eLitigation Practice and the Case for an AUSA Leading the Charge

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I. What you can learn from our experiences

Over the past two years, our U.S. Attorney's Offices (USAOs)—the Northern District of Texas (NDTX) and the Western District of Kentucky (WDKY)—have increased overall productivity, improved the quality of our case work, avoided errors that used to plague us, and reduced everyone's stress. We did that by instituting better, standardized electronic litigation (eLitigation) practices. We are still pushing through the inevitable kinks and growing pains—it is a process. But our people are more confident.

Here are the critical gains we now enjoy. We manage our cases instead of our cases managing us. Our cases are better organized, which allows everyone to focus on the substantive issues of a case instead of wasting time trying to locate misplaced case material or learn a lawyer's or paralegal's idiosyncratic system. Our discovery productions are more complete and reliable, and if we are accused of a discovery error, we are able to defend ourselves better—we can either prove there was no error or prove that an error was an anomaly, not an egregious error warranting court sanctions. Standardized practices mean anyone—a lawyer, staffer, or agent—can come into a case, even at the last minute, and be effective because they know how the case is organized. We are using litigation software tools that improve our efficiency and effectiveness—Eclipse, Relativity, CaseMap, and Trial Director.

Each of us was charged with leading the revolution. We are experienced Assistant U.S. Attorneys (AUSAs). At the start, we were not strong on technology, but that did not matter. What mattered most were the skills we honed as AUSAs: our knowledge and

judgement about litigation, our ability to communicate and advocate, and our ability to be ambassadors both within the office and with external stakeholders, such as the court, opposing counsel, law enforcement agencies, and client agencies.

Your office can achieve the same gains. As AUSAs from two offices that have overhauled their eLitigation practices, we tell our stories here and share what we see as the imperatives behind installing an AUSA as the office's leader of eLitigation change.

II. A tale of two districts

*"It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness . . . it was the spring of hope, it was the winter of despair . . ."*¹

Who knew that in 1859 Charles Dickens would so accurately describe what it means for a USAO to embark on building an eLitigation practice or that office morale during the process would be so akin to that during the French Revolution? Of course, that is a shameless over-exaggeration, but the opening lines of a *Tale of Two Cities* are an amusing yet appropriate backdrop for discussing our views on building a successful eLitigation practice in house and our perspectives as attorneys leading the charge in our respective USAOs. Indeed, it is an exciting prospect for an office to start this journey, but there are inevitable bumps along the way, which makes for both a good and not-always-so-good experience.

As we are well into what some call the *Digital Age*, more and more U.S. Attorneys are seeing the value and necessity of revamping their practices, policies, and office culture around eLitigation and discovery issues. Initially, some USAOs looked to systems managers or tech-savvy support staff to suggest changes. Recently, USAOs like ours have taken a different approach and turned, instead, to an experienced attorney to manage their office's eLitigation evolution. This model is used in many private law firms. Does it work? Well . . . we still have our heads (at least for now), and as this article's title suggests, we not only agree that it works, we also believe that an experienced AUSAs *must* lead the charge if a USAO wants to build a successful, comprehensive eLitigation program that extends well beyond the technical mechanics of processing and producing discovery.

¹ [CHARLES DICKENS, A TALE OF TWO CITIES 1 \(Dover Pub'ns, Inc.\) \(1859\).](#)

III. An awakening? Identifying the need for better eLitigation practices

Both of our offices were motivated to change because we had struggles:

NDTX. In 2017, we were well behind the times in terms of discovery management. It was catching up to us whether we realized it or not. Attorneys became anxious about discovery: Had agents turned over all of the case material? Had or hadn't we produced certain items to the defense? When did we produce them? Why didn't we produce them? AUSAs and staff became frustrated with the way agents provided investigative case materials to our office—materials that often required AUSAs and staff to wade through a sea of duplicates, try unsuccessfully to open files in non-standard formats, or make sense of a disorganized data dump. We had no uniform method for tracking our case materials from intake through discovery production. Few attorneys knew of document review tools like Eclipse and Relativity or how to use them. Those who did were not fans of either—so these tools were avoided. We lived in a world full of binders and printed paper. In the 21st century, we were still managing our case materials in the dark ages.

WDKY. Before 2018, the office had no standardized method for receiving investigative material, tracking and reviewing that material, and producing discovery. Rather, each AUSA used her own individualized methods to complete these tasks. While some methods were more successful than others, the lack of uniformity and standardized practices meant an overall lack of efficiency and unbalanced workloads among support staff. Also, we were concerned about whether our discovery productions were complete. Had we received everything from our agents? Had we fully complied with Rule 16 and the court's discovery orders? Was our district going to start seeing more motions claiming discovery violations like those that plagued other districts? If so, were we going to be able to successfully defend our discovery practices? And, like the NDTX, we were underutilizing available litigation software tools.

A. Northern District of Texas

The USAO for the NDTX serves an extra-large district with about 105 AUSAs serving 7 million residents over 96,000 square miles and 100 counties. About half of the AUSAs practice in the Dallas office, and the other half are spread among four satellite offices. For the last five years, NDTX has been one of the most productive USAOs in terms of criminal cases filed and defendants charged per AUSA—meaning we were all very busy, which exacerbated our risks around discovery management.

When Erin Nealy Cox, the U.S. Attorney for the Northern District of Texas, was appointed in November 2017, she quickly assessed the office’s discovery practices and workflows. In January 2018, she constructed a plan for building a comprehensive, office-wide eLitigation practice, to include a stand-alone Litigation Technology Unit (LTU). Its mission: to facilitate office-wide discovery and case-management practices, to provide litigation support and consultation at every stage of litigation, and to work across divisions to set best practices to bridge the gap between the practice of law and technology.

Ms. Nealy Cox created an entirely new position to head the LTU—Senior Litigation Counsel for Litigation Support—dedicated to standing up the LTU and managing all aspects of eLitigation for the office. She selected me, Lisa Dunn, a criminal AUSA, to assume this new leadership position. Candidly, at the time I was not sure I was the right person for the job. I started my career in 1995 as an Assistant District Attorney in Oklahoma City. I became a federal prosecutor in 2001. Since then, along with trying a lot of cases (but not a lot of complex fraud cases), I have enjoyed a variety of experiences both outside the USAO, including at EOUSA in the General Counsel’s Office, and in the USAO as the Ethics Advisor, the Professional Responsibility Officer, the Civil Rights Coordinator, the supervisor of one of our fraud sections, and the chief of the Criminal Division. At the time I was asked to become the Senior Litigation Counsel for Litigation Support, I was terrified and uncertain about what the new position would look like and how it would function in the office. The title “Litigation Technology Unit” intimidated me—I knew how to “litigate,” but I was incredibly uncomfortable with the “technology” aspect. After all, I am an attorney, not a technical expert. And as I mentioned, most people in our USAO were unfamiliar and inexperienced with the processes and tools associated with good

eLitigation practices, and I was most certainly one of them. But now I can see how my experience as an AUSA enabled me to lead the eLitigation revolution in my USAO despite my technical shortcomings. More on that below.

B. Western District of Kentucky

The USAO for the WDKY serves a medium-sized district with approximately 80 staff members, half of whom are AUSAs. The district encompasses 53 counties, a population of more than 2.2 million, and two military installations. We prosecute a wide variety of criminal offenses, from petty offenses occurring at Fort Knox, Fort Campbell, and Mammoth Cave National Park, to district-wide offenses such as public corruption, child exploitation, civil rights violations, and elder fraud. Like other districts, our white collar crimes and health care fraud prosecutions are document intensive. Because primary north-south and east-west routes of the Interstate Highway System intersect in our district, we have a significant drug trafficking and money laundering caseload. With the drug crimes, gun crimes are as prevalent as they are in many other major U.S. cities. Top priorities of Russell M. Coleman, the U.S. Attorney for the Western District of Kentucky, include reducing the violent crime and narcotics trafficking plaguing the district. Mr. Coleman previously served as an FBI Special Agent.

Soon after being sworn in, U.S. Attorney Coleman recognized the challenges of prosecuting cases in the digital age. He embraced eLitigation change in the office. Under his leadership, we launched a Litigation Support Unit (LSU), and the office began using a uniform method to track and review investigative material, typically consisting of large volume and complex types of material. The office also began producing discovery in a uniform way. The office created a new position, LSU Attorney Coordinator, tasked with working with case teams to implement eLitigation changes and managing the day-to-day work of the LSU while meeting the litigation needs of the case teams. I, Laura Hall, was selected for this new position. When I started in the fall of 2017, I had no idea what I was getting into. I considered myself inexperienced with eLitigation. Although a bit embarrassing to admit, I had only been using an electronic calendar for a couple of years. I had been a prosecutor for 12 years in state court and more than 15 as an AUSA—more than 27 years in all. During my entire career, I never prosecuted document-intensive white collar offenses but rather handled cases involving drug and gun offenses, including reactive

cases. I was not aware of tools like Eclipse to help manage and review case material; the only “eclipse” I knew about was the August 2017 total solar eclipse that passed directly across our district. That said, I had always embraced technology in my personal life, and knew I could do the same professionally. And with so many experts and resources available in my office and throughout the USAO community, I had no trouble arming myself with the technological knowledge I needed to lead our LSU to success.

IV. Establishing a new order: centralization and standardization

USAOs that do not already have a well-established eLitigation practice, either through the use of a LTU, a LSU, or some other dedicated electronic litigation-centric unit/section must likely start from scratch, revamping current practices, in essence, sparking a “revolution” that demands broad sweeping change (to stick with our Dickens theme). In this section, we will describe the key changes our offices implemented. Understanding the scope of these changes will give context to the significant substantive work an eLitigation AUSA must perform.

A. Northern District of Texas

One of the key components to the eLitigation revolution in the NDTX was the establishment of the LTU. While describing how to create such a unit is outside of the scope of this article,² it is important to recognize its role and how it fits into the office. In the NDTX, the LTU, which is currently comprised of four Litigation Technology Specialists, serves our entire district (main office and four satellite offices). While it most heavily serves the Criminal Division, it is also a resource for the Civil Division. The LTU processes most of our case data; creates, loads, and administers Eclipse databases; pushes out discovery productions; and project-manages a small number of cases outsourced to the Litigation Technology Service Center (LTSC). Beyond case-specific projects, the LTU also trains staff and attorneys on all relevant litigation-support programs/software,

² For more information on how one district set up a Discovery Center, which is one type of LSU, see [Bryan Schroder & Aunnie Steward, *Pioneering a Modern Discovery Process: District of Alaska’s Discovery Center*, 66 DOJ J. FED. L. & PRAC., no. 5, 2018, at 51.](#)

provides technical advice at discovery case meetings and conferences, and regularly troubleshoots for the support staff on a variety of litigation-support issues. I directly supervise the unit, meet with the team weekly, oversee its work, and prioritize the workflow. I report directly to the Managing AUSA (also known as the Executive AUSA in other districts), so the LTU sits outside of the litigating divisions' chain-of-command.

Another key component was establishing standardized practices for the LTU and the office as a whole. In developing the office's policies and protocols, I quickly recognized that they had to be stringent enough to be legally defensible without sacrificing the flexibility needed when the best-laid plans go wrong. For example, one of the first changes implemented in the NDTX was the adoption of standardized electronic file practices. I worked with the office's various divisions, both criminal and civil, to develop a uniform folder structure, and we moved all of our case files and case-related materials to the Cloud. This common folder structure kept our cases organized so that if a member of the case team was unavailable or the case was reassigned, newly assigned employees could easily locate case materials and work product. The common structure, however, was not so detailed and rigid that attorneys were not allowed the freedom to create their own subfolders per their particular organizational preferences or tailored to particular needs of a case. We also implemented for all criminal cases an intake and discovery production tracking system that required a designated USAO case team member (Discovery POC) to log all incoming and outgoing discovery for the case. While there is a default designee (who is the litigation support paralegal), AUSAs can designate whomever they wish as the Discovery POC, including themselves if they determine that is best for the case. One of the most important standard practices we set were baseline requirements for discovery productions in all cases: All productions must be searchable, trackable (for example, Bates numbered), indexed, and accompanied by a production letter. That said, as the Senior Litigation Counsel for Litigation Support, I retained the discretion to determine on a case-by-case basis when (and if) to diverge from these baseline requirements and how to implement the best "Plan B" for case teams in the event of unexpected time constraints or difficult, court-ordered discovery deadlines. Having an AUSA dedicated to making fast decisions about these issues gave attorneys the assurance that they could still meet court-mandated

deadlines even if, for reasons outside of their control, they could not strictly comply with NDTX policy. Instead, I stand ready to approve an exception to the rule as appropriate to keep teams in good stead with the court and safely moving forward in compliance with their discovery obligations.

Moreover, it was critically important to recognize that the scope of the changes necessary to build a successful eLitigation practice did not stop at our USAO's doors. It meant involving our law enforcement partners, opposing counsel, and even the court to achieve a legally defensible protocol that accounts for not only how the USAO manages discovery in house, but also how we receive case material from our agents and how we produce it. This 360-degree approach led to tremendous changes that enabled our internal policies to complement the efforts of our external counterparts, leading to less confusion and more transparency in the discovery process.

B. Western District of Kentucky

In the WDKY, one of the central components of our eLitigation change was establishing a unit dedicated to litigation support tasks—which we call the LSU. The LSU is separate from both the criminal and civil divisions, and its staff is supervised by the office's First Assistant United States Attorney. The LSU consists of a full-time AUSA as its coordinator and three staff members who process case material, build Eclipse databases, create discovery and other exports, and coordinate work with the LTSC in South Carolina. The LSU also performs tasks related to courtroom presentations, such as converting audio and video files and loading them onto iPads.

With the opening of the LSU, a radical but necessary change occurred in the way the criminal division received investigative case material, tracked and reviewed that material, and produced discovery. It shifted from each AUSA using his or her own individualized methods to a standardized framework for these tasks. The benefits are described below.

This framework includes a standardized process for tracking case material from the point it comes into the office, to if and when it is produced in discovery. This process includes using one case manifest per case, which is stored in the case's electronic file. The case manifest is an Excel spreadsheet with three parts: a collection log, a discovery index, and a production log. The information logged on the case manifest and contained in its three parts serve as proof that our

standardized practices were followed and can be used when defending against discovery violation motions.

When any criminal or civil case material is received, a designated WDKY staff member must enter its tracking information in the collection log of the case manifest. When the AUSA is ready for the material to be processed and loaded into either an Eclipse or Relativity review database, a case team member submits a work ticket to the LSU who performs this task. Case teams are required to use Eclipse or Relativity to more efficiently review, organize and redact material, and select material for upcoming discovery productions.³ After the AUSA has selected discovery and completed redactions in the review database, a case team member submits a work ticket to the LSU who will create both an electronic export of the selected discovery and the discovery index of the case manifest. Lastly, when the discovery is transmitted to opposing counsel, the designated case team member enters the tracking information in the production log of the case manifest.

As in the NDTX, we see law enforcement as a vital partner, and we want to ensure that their evidence collection and organization methods complement our internal eLitigation efforts. As part of this effort, we created written guidelines for how we want investigators to organize and format the case materials they provide us. I provided training to investigators on our guidelines, and the office now requires investigators to follow the guidelines when providing materials.

Today, the WDKY would not choose to revert to our old ways—not the U.S. Attorney, not the lawyers, not the staff. Everyone is happier and more confident.

C. The benefits of centralization and standardization

If you are feeling overwhelmed by the prospect of building a standardized workflow from the ground up, do not be deterred. We have seen that the destination is very much worth the journey. Yes, it was overwhelming, and frustrating, and exhausting. But at the same time, it was very rewarding and invigorating. With the right AUSA

³ If material is too large to store in a review database, as is often the case with computer or smart phone forensic examinations, a place holder is added to the review database, and the native material is stored in a central location. A place holder is also used for material that cannot be loaded into a review database, for instance when it can only be viewed using a proprietary player.

leading the charge, any USAO can get a formal, standardized eLitigation practice up and running. Then, once it is operational, seeing its success will have you questioning how you survived without one. In fact, U.S. Attorney Coleman often describes the WDKY's LSU and its associated standard practices as revolutionary.

Having *and following* a formal, standardized workflow to manage case material and discovery is essential to realizing several key benefits. First and foremost, it allows us to be better organized, which saves time and lowers stress. Better organization also allows us to improve our efficiency, which means more time can be spent on the substantive issues of a case instead of wasting time trying to locate misplaced case material. And naturally, more time spent on the substantive issues of a case ensures better case results. Ultimately, a standardized workflow enabled our offices to manage our cases instead of our cases managing us, moving us away from deadline driven discovery productions to quality driven discovery productions.

Having a standardized workflow also allows us to better defend ourselves in court against motions alleging discovery violations. If a discovery mistake were to happen in a case, being able to respond by describing a standardized workflow and offering proof that it was followed will more likely convince the court that the mistake was an anomaly and not a pattern likely to be repeated. Thus, the court will be more likely to rule in our favor and less likely to issue sanctions that could jeopardize our case.

Another benefit of a standardized workflow is more balanced workloads among USAO staff. Each case team member will know the exact task for which he or she is responsible for during the case's life, and the tasks can be equitably divided to optimize productivity. This standardization allows for interchangeability, and it eliminates the need for one AUSA or paralegal having to learn, or even worse, guess, another's idiosyncratic system. If one paralegal needs to cover for another in the middle of a case, or even one AUSA for another, it is accomplished seamlessly by using the standardized tracking logs to determine what case material has been received and what, if any, has been produced in discovery. In a criminal case, it is even helpful when a new agent takes over a case. The new case agent can see from the USAO's tracking log exactly what the previous case agent provided and can avoid bogging the case team down by providing duplicate material.

Standardized workflows incorporate software tools that further improve our efficiency and effectiveness. Tools like Eclipse, Relativity, CaseMap, and Trial Director are available to all USAOs. They are easy to use and should now be a part of our everyday practice. Consider their use as being akin to how we now Shepardize our case law. We no longer manually use Shepard's paper volumes to check case citations; instead, those tasks are automated by computer software, which saves a tremendous amount of time. It would be ludicrous to Shepardize a case now using those old books (assuming they are even still in libraries); it is an equally ludicrous proposition to not use the other software tools that enhance our efficiency and effectiveness as litigators.

V. Every revolution needs a strong, competent leader: the case for an eLitigation AUSA

Given the challenges of eLitigation and the amount of coordination and effort required to create and support eLitigation policies, workflows, and best practices, it is critically important to have an AUSA lead these efforts. But if you are thinking, "there is absolutely no way an AUSA can be taken off the line in my office" to perform this work, we urge you to reconsider. You will not be taking an AUSA off the line at all. To the contrary, you will be taking the substantial time and effort that all your AUSAs would otherwise inefficiently spend on electronic litigation issues and reassigning it to one AUSA who will do it better and faster. You will gain overall improved efficiency and effectiveness flowing from specialization and expertise that will more than make up for the fact that an AUSA has been reassigned to improve the handling of all your office's cases.

It reminds us of that parable about sharpening the saw: Two loggers are in the woods sawing down trees. One logger feverishly sawed and sawed, never stopping. The second logger stopped sawing at regular intervals, leaving the forest each time for a few minutes before returning. At the end of the week, the first logger had barely made a dent in his section, only cutting down a few trees despite not taking a single break. But the second logger had chopped down all of the trees in his section. The first logger was dumbfounded. He could not understand how the second logger cut down so many more trees despite taking so many regular breaks. When the first logger asked the second where he had disappeared to so regularly, the second

answered that he kept leaving to go sharpen his saw. By taking the time to maintain a sharp saw, the second logger was much more effective and efficient than the first. So when you pull an AUSA off the line to lead the office's eLitigation efforts, consider it to be sharpening your office's saw. Despite having one less AUSA assigned to individual cases, your office will be able to accomplish more across all of its cases because it will operate more effectively and efficiently.

"But," you may ask, "must it be an AUSA?" In our experience, the answer is a resounding, "Yes!" An experienced AUSA is best-positioned to achieve success because only an AUSA can fill the following indispensable roles.

The driver of change. Think about all of the decisions that have to be made to implement eLitigation changes in the office. For example, will the new protocols be mandatory for all case types or only for some? In which division, civil or criminal, or both? How will your staff be trained to follow the new protocols? What steps can be taken to best encourage staff to want to follow the new protocols? How will you transition to using the new protocols? Will the start date be based on the date a case is opened or the date case material arrives in your office? Will you require a portion of your protocols to be mandatory, for example, the logging and tracking of incoming material, while other portions are optional, for example, the use of a review database like Eclipse? How will you train your staff to use Eclipse considering any differences in experience levels? What permissions will you give your staff, and what standardized tags can be created so their use of Eclipse is optimized? Which network drive will you use to store the material going into Eclipse? If using the cloud, is your office willing to incur the related expense? When a case is closed, who will be responsible for deleting the Eclipse material from the designated drive, and when will the deletion occur? If you have staffed satellite offices separate from your main office, how will you successfully transfer data between office drives without it having a negative effect on your network? If you decide to establish a LSU, what system will you use to get and manage your LSU's work requests? Who will supervise your new LSU? Will your new LSU's staff, especially your unit's AUSA, need revised performance work plans?

Only an eLitigation AUSA can provide the judgement and insights necessary to guide the management team in answering these questions. An AUSA is able to talk to and learn from other AUSAs in similar positions throughout the USAO community, become adept at

technology-specific case issues, investigate the options available to your office based on its size and needs, weigh the pros and cons of the options, and make an informed recommendation to office leadership. An experienced AUSA is particularly well suited to do so because of their practical understanding of, and experience with, all steps in litigation. Better than an IT systems manager or technologist, an AUSA understands what the district's judges require and what challenges case teams face when dealing with investigators, agencies, and opposing counsel. Drawing on this understanding, an AUSA can tailor standard practices and workflows to accommodate what case teams really need to best accomplish the mission of the office.

Further, an AUSA dedicated to eLitigation issues can get in the weeds and *stay there* so office leadership and line AUSAs do not have to. The eLitigation AUSA can keep a constant eye on new and emerging trends in the field and emerging legal issues and help ensure that the USAO continues to move forward.

The Manager and Bridge Builder. Both of us oversee the operation of our LSUs. In this role, we prioritize and manage our unit's work, ensuring that case-related deadlines are timely met. Managing shifting priorities between cases is critical, and it requires an AUSA's judgment and authority. We have also been involved in hiring staff, designing and outfitting office space, acquiring equipment, and ensuring that litigation technology specialists are properly trained.

An AUSA brings an important perspective to this management role: They serve to bridge the thought process gap between litigation support personnel and the case AUSA who is—and should be—laser focused on cases. Quite simply, the litigation support brain and the case AUSA brain think differently because they have different training, experiences, and responsibilities.

Having an AUSA's thought process and constant presence in a LSU is the best way to ensure that the finished product fully meets the AUSA's needs every single time. It ensures that a case's technological-related problems are resolved to meet the AUSA's needs, led by the eLitigation AUSA. And it frees up the case AUSA to focus solely on the case's substantive issues while the eLitigation AUSA works though the case's technology issues in conjunction with litigation support personnel. In fact, the eLitigation AUSA can and should be a part of every single case early on in order to identify

potential technical problems related to litigation support and proactively work to solve those problems from the beginning.

Having had similar professional training and case experience, the eLitigation AUSA is a credible voice, a voice that speaks the same language as the case AUSA when discussing technology issues. When explained by a peer, the case AUSA is more likely to understand and accept the fact that litigation support personnel do not have “an easy button” to perform tasks and that some tasks take a certain amount of time to complete. This also allows litigation support personnel to feel, and actually be, supported. The eLitigation AUSA is better able to educate litigation support personnel about litigation-related issues. For example, when litigation support personnel are frustrated about having to process incoming case materials in a piecemeal fashion, the eLitigation AUSA can remind them that the case AUSA is not purposely trying to make a litigation support personnel’s work more challenging. Instead, the case AUSA is receiving the material in a piecemeal fashion and may be equally frustrated.

Ultimately, instead of AUSAs and litigation support personnel existing on separate islands, the eLitigation AUSA can be the constant bridge between the two. Ideally, the eLitigation AUSA will equally have the backs of litigation support personnel and the case AUSA, all while ensuring the case AUSA’s litigation needs are fully and timely met. That enables better communication, which results in a more harmonious and less contentious work environment, leading to increased productivity and improved morale.

The advocate. If there’s one thing AUSAs know how to do, it is advocate. Without question, the eLitigation AUSA position requires full-time advocacy for the USAO’s interests—even within the office—on a daily basis. eLitigation is ever-changing. For that reason, an eLitigation AUSA is constantly evaluating the USAO’s needs and convincing someone to act—whether that is making the case for more litigation support personnel, encouraging an AUSA to use Eclipse, convincing a supervisory law enforcement agent to direct his forensics agents to use different processing tools for better compatibility with our processing software, and on and on. The eLitigation AUSA consistently engages, collaborates, negotiates, coordinates, and when appropriate, gently pushes the envelope with personnel in every office division and up to the highest ranks to advance and maintain each building block in an office’s eLitigation practice.

The bottom line is that this role goes well beyond managing litigation support functions, which itself is a significant undertaking. It requires someone with an intimate understanding of the daily responsibilities and burdens of an AUSA and someone who can and will effectively advocate for the USAO from that perspective. Who better to lead this effort than an experienced AUSA?

The Ambassador. As we have emphasized, building a comprehensive eLitigation practice necessarily involves including our law enforcement partners and other outside stakeholders that directly impact the USAO's workflows. This effort requires frequently reaching out directly to agency leadership, the Federal Defender, and judges—a role uniquely suited to an experienced AUSA. In particular, when (1) forming guidelines for how agents provide case materials to the USAO for discovery; and (2) setting uniform standards for outgoing discovery productions in criminal and civil cases, an eLitigation AUSA's leadership is critical to success. These projects require frequent meetings with supervisory law enforcement agents and their chief division counsel, the Federal Defender and the chair of the Criminal Justice Act (CJA) panel attorneys, and magistrate judges, amongst others, to push for change, acknowledge their interests, explain the USAO's interests, and draft and formulate collaborative and effective guidelines and standards that will improve our overall work product and process. Simply put, such meetings and discussions, which are essential to a comprehensive eLitigation overhaul, can only be handled by an attorney, and most appropriately by an experienced attorney accustomed to negotiating and engaging with law enforcement representatives, opposing counsel, and judges.

The full-time, dedicated resource. But you may be thinking, do we really have to dedicate a *full-time* AUSA to this position? In our experience, the answer is, again, a resounding, "Yes!" We do not have regular dockets, nor could we work one properly if we did. This role, however, is legal work that heavily calls upon our AUSA expertise and requires our full-time attention. We make the other AUSAs much more efficient and productive. As eLitigation AUSAs, we directly oversee our LSU and their technical staff. We also serve as the central eLitigation trainer for AUSAs and staff; the primary case consultant for eLitigation legal and technical issues; the eLitigation advisor to USAO senior management; and our offices' liaison to Main Justice, outside agencies, and the court on all technical and legal eLitigation issues. We are responsible for keeping an eye on emerging eLitigation

issues and topics (and advising accordingly), creating go-bys, and consulting on legal briefs on eLitigation issues. Having served in this role for over two years, we can confirm that, to do it well, the amount of time and work involved in building and sustaining an eLitigation practice is easily a full-time job.

VI. Identifying the right eLitigation AUSA

Now that we have convinced you of the wisdom of creating the eLitigation AUSA position within your office, you must choose an AUSA for the position. What qualities must this person possess?

Litigation experience. The eLitigation AUSA should have a good deal of practical experience in litigation, in the courtroom, and in handling a variety of evidence types. Having sufficient practical case experience gives an eLitigation AUSA the background knowledge needed to see the big picture and know what strategies are workable for your particular office. With this experience, the AUSA will know what the desired end results are and can work backwards when developing protocols to reach the desired end. An inexperienced AUSA who has never seen “the end” is less likely to develop protocols that work for the end. Wisdom is required. Experienced AUSAs have the honed instincts and judgment from working cases to know when it’s appropriate to break with standard practice if it becomes an impediment to satisfying a judge, fulfilling a legal obligation, or accomplishing the mission. A veteran AUSA who already has established credibility in the office may also find more success in making recommendations for change, as their peers may be more likely to trust and follow their lead. This established credibility allows the AUSA to get to yes quickly or push through the inevitable “no’s,” “can’t do’s,” and other obstacles as changes are implemented.

Relationship builder. Building a new eLitigation practice for your office does not mean reinventing the wheel. Others in the USAO community are ready, willing, and able to help you. Finding success involves researching existing practices in other USAOs and figuring out what to borrow and what to ignore. An eLitigation AUSA proactively identifies and reaches out to people in other USAOs that are doing eLitigation right. Depending on the situation, networking on behalf of your USAO can be intimidating, and some perceive a solicitation for consultation or model processes as an admission of weakness. An effective eLitigation AUSA is willing and able to forge new connections with subject-matter experts occupying a variety of

positions in other USAOs, at EOUSA, and elsewhere. These connections are critical; they allow your office to benefit from other USAOs' successes and learn from their mistakes.

Positive problem solver. Having a cache of positive and valuable relationships outside of your office is only half of the equation. Relationships within your office are just as important, maybe even more so. An eLitigation AUSA who can adapt and positively solve a problem regardless of its source and type will likely be more successful. Being able to offer encouragement, optimism, support, and understanding when solving problems helps to ensure solutions are accepted even when everyone may not get exactly what they want.

Attention to detail. It is important for the eLitigation AUSA to be detail-oriented and have strong organizational skills. You certainly would not want to tap an AUSA who has a history of misplacing files with the task of building protocols designed to effectively track and manage everyone's case materials.

A willingness to learn key technical considerations and tools. All of the above being said, have you noticed that there was no mention of the AUSA being an expert in eLitigation or information technology? We did not overlook this trait; it is simply not as important as the others. We are living proof: As discussed above, neither of us brought technical expertise to the eLitigation AUSA position. But we each had a willingness to learn the technical aspects of our job, especially where legal considerations informed the technical choices that we had to make. These technical aspects can be learned; the instincts and experience of an AUSA that are critical to the big picture success of an eLitigation practice cannot be acquired by non-lawyers.

VII. Considerations for senior management

As we have noted, were it not for the vision and ongoing support of our U.S. Attorneys and the other senior leaders of our USAOs, we would not have been successful in our efforts. Their backing gave credibility to the process and the improvements we made. This is a critical lesson for other USAOs: The eLitigation AUSA *will not* succeed without ongoing support from senior management. This support takes a variety of forms, including:

Empowering the eLitigation AUSA to set policy for the office, and providing them with the tools to enforce it. The eLitigation leader can only be effective if they are empowered to set, implement,

and enforce eLitigation policy. This empowerment needs to be meaningful, and it also needs to be public—because unless you want every announcement, training, or decision to appear to come from someone else, people need to know that your eLitigation AUSA is in charge of eLitigation and all that it entails. Once the policy for the office has been set, you also need to have a unified plan to overcome recalcitrance and resistance. The message must be clear that everyone must follow the standard practice regardless of how exhaustively thought out the excuse not to do so may appear. It must be clear to everyone, including lower level supervisors tasked with ensuring compliance, that there are no exceptions. Instead, staff will be fully supported through the change with training and extra attention and help whenever needed. And if along the way a change in practice is suggested, then the suggested change must work well for the entire office in order for it to be implemented.

Making significant investments to properly equip, staff, and train personnel in sound eLitigation practices. Doing it right is expensive in terms of time and resources, and like any other transformation, you have to be willing to invest in the short term to reap the long-term returns on the investment.

Fully embracing the role of the eLitigation AUSA and understanding that it is a full-time job. Either sacrifice a front-line player or don't, but do not ask an AUSA to build the office's eLitigation practice and maintain a full case docket. You will set your AUSA up to fail on both accounts.

Setting realistic expectations on how quickly your office will move forward. Depending on the current state of your office's eLitigation practices and workflows, it will take time to get everything up and running, and after that, it will require near-constant reinforcement. Set small, attainable goals along the way and celebrate those successes. Don't set up your leader for failure by expecting an office-wide transformation overnight.

Recognizing there is no nirvana. As U.S. Attorney Nealy Cox repeatedly reminds everyone, there is no nirvana in eLitigation. No one will reach their happy place here (or find a unicorn). It doesn't exist. It will have to be satisfaction enough knowing that your office has established a solid eLitigation practice and a legally defensible workflow.

VIII. Final thoughts: pay it forward

Building an eLitigation practice from the ground up is no easy task, but it is attainable with a clear vision for your office, strong senior management support, and a little help from your friends like us who stand ready, willing, and available for questions, advice, encouragement, and anything else that may help other USAOs that are just starting their eLitigation revolution. With an experienced AUSA leading the charge—empowered and fully backed by senior leaders—your office will succeed in building for attorneys and staff a legally defensible workflow from intake through production to defend their convictions, protect their bar licenses, and ensure they get a better night's sleep. Finally, for those who may find themselves in our shoes, good luck, and don't forget as you work through these changes—try to hold on to your head!

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