Clearing the Confusion:

TAR

and how it can save you **time and money**

LLM LIQUID LITIGATION MANAGEMENT, INC.

The Judicial Stamp of Approval

In 2012, U.S. Magistrate Judge Andrew Peck issued the first court decision that approved the use of technology-assisted review (TAR) for e-discovery.

In *Da Silva Moore v. Publicis Groupe & MSL Grp.*, the judge stated that TAR was an "available tool and should be seriously considered for use in large-data-volume cases where it may save the producing party (or both parties) significant amounts of legal fees in document review."

A few years later in *Rio Tinto Plc v. Vale S.A.*, Judge Peck generated buzz again when he referred to his 2012 decision and declared TAR's use as "black letter law."

So with judicial approval and dozens of cases supporting TAR's use, it's frequently and confidently used for review, right?

NOPE.

57%

do not use TAR

Norton Rose Fulbright "2015 Litigation Trends Annual Survey"

While use of the e-discovery tool has increased
over the past several years, there's still hesitation
around adoption.

Common Misperceptions about TAR

CONCERN	REALITY
Confusion about how the tool works	TAR is actually very easy to learn and use in a few simple steps.
Concerns about its reliability	It is statistically sound and validated in dozens of court cases.
Hesitation around relying solely on TAR, thinking that no linear review happens if it is used	Savings can still be achieved by using TAR in conjunction with linear review.
Concerns about the added cost of using TAR	No matter the scenario, TAR substantially reduces review costs.

What follows is TAR made easy — promise.

In just a few pages, you'll have a clear understanding of the tool, and how it can save you time and money.

TAR Defined

(a.k.a. Predictive Coding)

Counsel gets TAR started by taking a subset or sample of documents and manually making decisions at a computer about those documents. For a parallel example, let's say you pull fruit randomly from a bag looking for apples. The apples are set aside as "responsive" and any oranges are placed in another group and labeled "non-responsive." The computer then applies that decision-making to the larger batch of documents.

TAR Step by Step

STEP 1
Set aside (sample) a subset of documents and flag them manually.

STEP 2
Your responses are fed through the computer, which will propagate those decisions to the rest of the documents.

STEP 3
Review a small portion of the computer's decisions, either agreeing or changing the decision.

STEP 4
Your fine-tuning is fed through the computer, refining its decisions and re-propagating.

STEP 5
Continue steps 3 and 4 until no more refining is needed from the computer-based decisions.

STEP 6
Complete your review with a quality check that identifies recall and precision rates to validate the process.

Ok, But *Why* Use TAR

TAR is one of the greatest tools to prioritize review,
keep costs down and assess risk exposure.

TAR can also

Identify documents related to key topics

Cull and reduce data
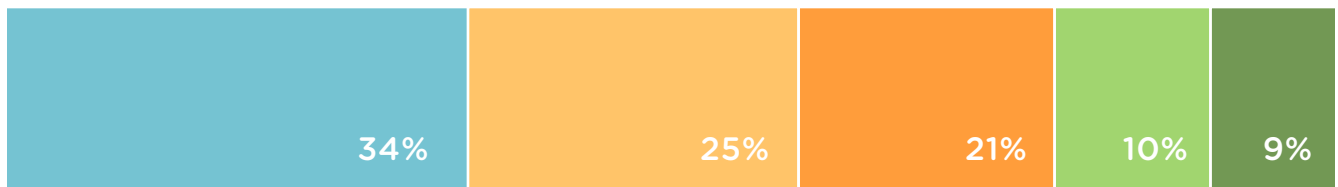
Speed up review

Improve review quality

Help prioritize and make strategic decisions

But about keeping costs down ...

Hey, Big Spenders

The Norton Rose Fulbright "2015 Annual Litigation Trends Survey" revealed the latest figures for annual litigation spend (excluding costs of settlement and judgments) in the United States.

34%	25%	21%	10%	9%

- ● $1M TO <$5M
- ● ≥$10M
- ● <$500K
- ● $5M to <$10M
- ● <$500K to <$1M

Savings and Speed

50%

Review is still the **single greatest cost** of any investigation or litigation.

TAR can help reduce review costs for discovery and opposing counsel's production by up to 50%.

Using a managed review team, you say? You should still use TAR to cut costs.
Crunch the savings-numbers yourself! »

TAR also reduces the actual time spent on review.

The process can help get key eyes on the most relevant documents and data most quickly while eliminating what's not relevant or using lower cost resources.

When You Absolutely, Positively, Should Be Using TAR

1   You want to prioritize review and/or cull the data to save a ton of money.

2   You want to quickly find specific topics in opposing counsel's production.

3   If you're early in the case and don't know what documents you have, it will help identify key documents more quickly in order to assess risk and make strategic decisions.
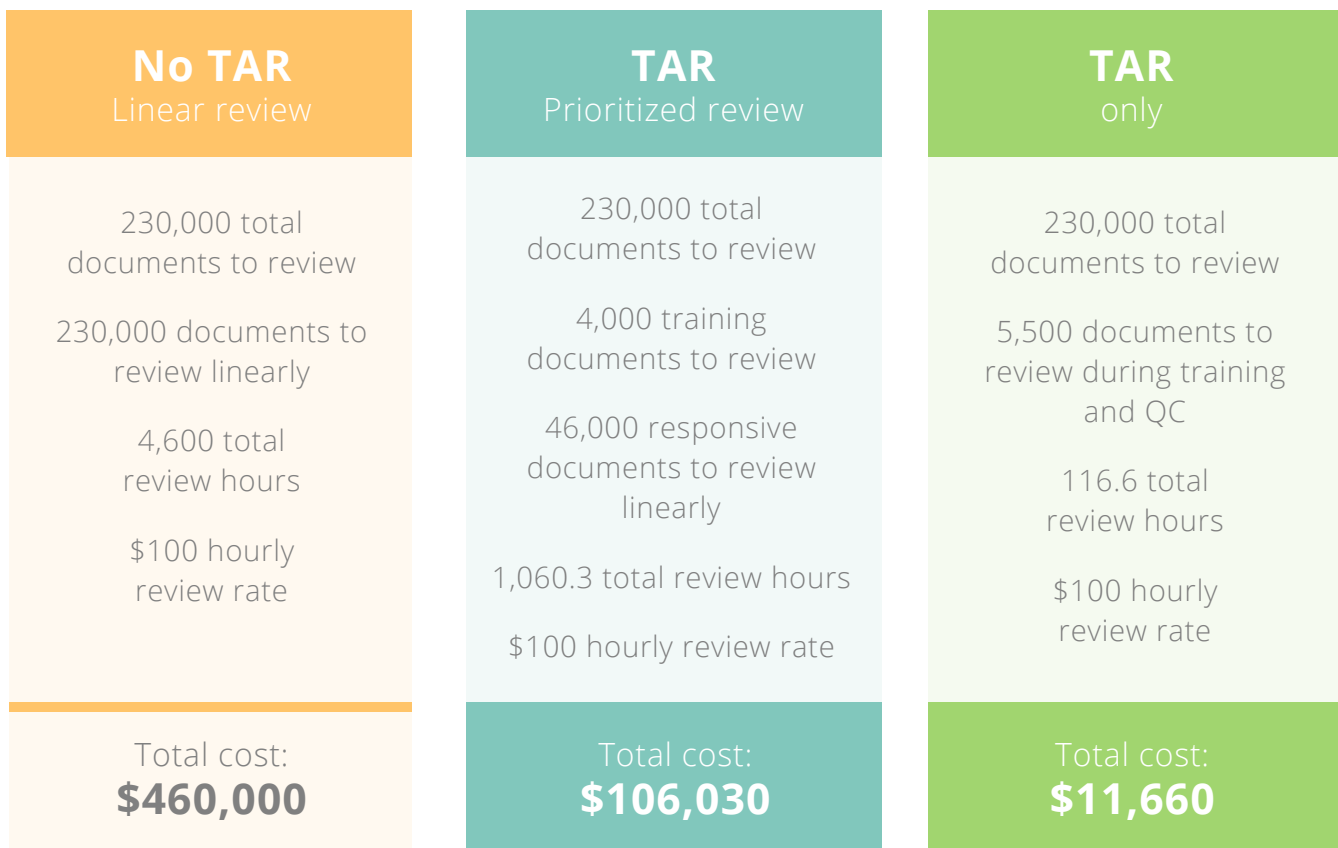
4   You're working with foreign-language documents and want to magnify effort by limited or costly native-language staff.

5   You have 50,000+ documents.

Let's Pretend ...

You have 230,000 documents that need to be reviewed at an hourly rate of $100. This could easily increase or decrease depending on who's doing the review (managed review, within law firm, etc.).

No TAR Linear review	TAR Prioritized review	TAR only
230,000 total documents to review	230,000 total documents to review	230,000 total documents to review
230,000 documents to review linearly	4,000 training documents to review	5,500 documents to review during training and QC
4,600 total review hours	46,000 responsive documents to review linearly	116.6 total review hours
$100 hourly review rate	1,060.3 total review hours	$100 hourly review rate
	$100 hourly review rate	
Total cost: **$460,000**	Total cost: **$106,030**	Total cost: **$11,660**

Bottom line: TAR saves you time and money.

Leading by Example

One of LLM, Inc.'s clients was involved in a suit with a substantial number of Asian-language documents making up a large percentage of the total document population. The firm had a single native speaker at the office and needed to use a more costly offshore team of native speakers to complete a linear review. Given the cost and tight deadline, the firm decided to have their in-office native speaker perform a TAR review on key custodians. The responsive documents were then expedited to the offshore team for further review enabling them to **meet their deadlines.**

Another client, an AmLaw 100 law firm, had a case involving hundreds of thousands of documents. They used TAR to identify documents that were most likely responsive and created review sets of those documents, which they then reviewed linearly for things like privilege and topic identification. For the documents TAR found non-responsive, they ran search terms as a quality control measure and confirmed that the documents were in fact non-responsive. **This saved them many, many hours of review time and their clients tens of thousands of dollars as a result**. It also eliminated the need for a managed review team, since they were able to manage review with their internal resources with the help of TAR.

Mounting Evidence

In addition to Judge Peck's *Da Silva Moore v. Publicis Groupe & MSL Grp.* in 2012 and *Rio Tinto Plc v. Vale S.A.* in 2015, there have been dozens of cases and papers in support of TAR.

Acknowledgement, endorsement and encouragement:

• *Global Aerospace, Inc. v. Landow Aviation, L.P.*, No. CL 61040 (Vir. Cir. Ct. Apr. 23, 2012)

• *Nat'l Day Laborer Org. Network v. U.S. Immigration & Customs Enforcement Agency*, No. 10 Civ. 2488 (SAS), 2012 WL 2878130 (S.D.N.Y. July 13, 2012)

• *In re Actos (Pioglitazone) Prods. Liab. Litig., MDL* No. 6:11-MD-2299 (W.D. La. July 27, 2012)

• *EORHB, Inc. v. HOA Holdings, LLC,* No. 7409-VCL (Del. Ch. Oct. 15, 2012)

• *Gordon v. Kaleida Health*, No. 08-CV-378S(F), 2013 WL 2250579 (W.D.N.Y. May 21, 2013)

Mounting Evidence

continued...

• *In re Domestic Drywall Antitrust Litigation*, 300 F.R.D. 228, 233 (E.D. Pa. May 12, 2014)

• *FDIC v. Bowden*, No. CV413-245, 2014 WL 2548137 (S.D. Ga. June 6, 2014)

• *Dynamo Holdings Ltd. P'ship v. Comm'r of Internal Revenue*, Nos. 2685-11, 8393-12 (T.C. Sept. 17, 2014)

• *Green v. American Modern Home Insurance Co.*, 2014 WL 6668422 at *1 (W.D. Ark. Nov. 24, 2014)

• *Ghorbanian v. Guardian Life Insurance Co.*, 2016 WL 1077251, at *2 (W.D. Wash. March 18, 2016)

Discussion of its use:

• *Arnett v. Bank of America, N.A.*, 2014 WL 4672458, at *9 (D. Or. Sept. 18, 2014)

• *Kissing Camels Surgery Center, LLC v. Centura Health Corp.*, 2016 WL 277721, at *4 (Mag. D. Colo. Jan. 22, 2016)

Mounting Evidence

continued...

Costs could included in awarded costs and attorneys' fees:

• *Gabriel Techs., Corp. v. Qualcomm, Inc.*, No. 08CV1992 AJB (MDD), 2013 WL 410103 (S.D. Cal. Feb. 1, 2013)

Cooperation and transparency are included as factors in evaluating TAR:

• *Progressive Cas. Ins. Co. v. Delaney*, No. 2:11-cv-00678-LRH-PAL, 2014 WL 2112927 (D. Nev. May 20, 2014)

Court approved plaintiff requested use of TAR, despite defendant's objections:

• *Bridgestone Americas, Inc. v. Int. Bus. Machs. Corp.*, No. 3:13-1196 (M.D. Tenn. July 22, 2014)

• Maura R. Grossman & Gordon V. Cormack, "Technology-Assisted Review in E-Discovery Can Be More Effective and More Efficient Than Exhaustive Manual Review," XVII RICH. J.L. & TECH. 11 (2011)

• Grossman, Maura R. et al "Evaluation of Machine-Learning Protocols for Technology-Assisted Review in Electronic Discovery" (2014)

The American Bar Association Says ...

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> "Technology, machine learning, artificial intelligence, and system process improvements are making some types of legal services more accessible and reducing (sometimes even eliminating) the cost of those services."
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> - ABA's "Report on the Future of Legal Services" (2016)

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> "We must open our minds to innovative approaches and to leveraging technology in order to identify new models to deliver legal services. Those who seek legal assistance expect us to deliver legal services differently. It is our duty to serve the public, and it is our duty to deliver justice, not just to some, but to all."
>
> - William C. Hubbard, ABA President 2014 -15

Final Words

It should be quite clear now that TAR is a statistically sound technology, with the backing of many in the legal industry, that can expedite review and reduce costs, translating into quantifiable time and cost savings for your department or firm.

So, whether you use TAR on your next matter or in the future, you can do so with complete confidence.
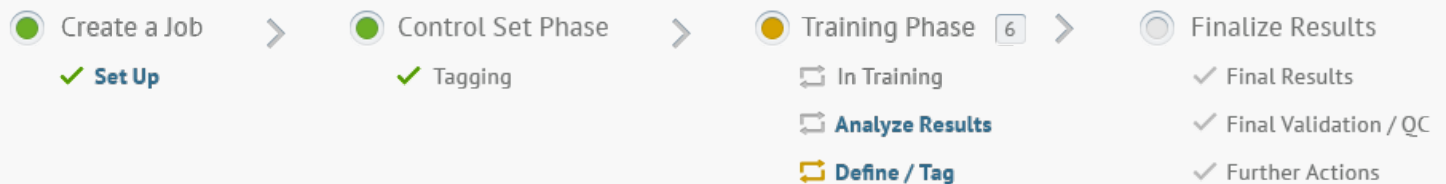
Resources

LLM, Inc. offers the following resources for more on TAR.

A Comprehensive Guide to Technology-Assisted Review (TAR) (white paper) »

On the Same Page: TAR for Asian Languages (white paper) »

TAR Savings Calculator »

LLM offers TAR as a way for Liquid Lit Manager™ users to save time and money

● Create a Job ＞ ● Control Set Phase ＞ ● Training Phase 6 ＞ ○ Finalize Results
✓ **Set Up**   ✓ Tagging   ⟳ In Training   ✓ Final Results
                                                  ⟳ **Analyze Results**   ✓ Final Validation / QC
                                                  ⟳ **Define / Tag**   ✓ Further Actions

Ready to start saving time and money?
Get a demo »

About LLM, Inc.

LLM, Inc. unifies the legal process by combining legal holds, case strategy, matter and budget management, review and analytics in a single, web-based platform. We connect legal strategy to tactics in a way no one else can, so every part of the process is actionable. Our product scales to help corporate and law firm teams gain cost-savings and eliminate inefficiencies.