At the Legal Technology Leadership Summit opening reception on Tuesday, I struck up a conversation with a friendly young lawyer. He won immediate social coolness points for several reasons: He has a beard. He's from the East Bay, like me. He runs a solo practice, and he had some good stories about lawyers following unique, non-lawyerly paths (which we might mention in future posts).

Needless to say, I was surprised to walk into Thursday's keynote discussion, "Qualcomm Revisited: When Lawyers Face Discovery Sanctions," and discover that this attorney was actually the youngest member of the Qualcomm Six.

Adam Bier was still a self-described "baby lawyer" when he was wrongfully sanctioned in the landmark 2008 Qualcomm e-discovery case. Kashmir Hill interviewed him early last year, when the appealed sanctions were finally vacated, more than two years after they were first imposed. Bier shared his story with conference attendees, joined onstage by U.S. Magistrate Judge David Waxse and Frank Cialone of Shartsis Friese, who defended several of the outside counsel in Qualcomm.

After the jump, learn the details of Bier's nightmare experience. Can you imagine yourself in his shoes?

Qualcomm v. Broadcom was a large patent dispute. It was Bier's first trial at Day Casebeer (which later merged with now-defunct Howrey). Bier was a new associate, and one of many outside counsel working for Qualcomm.

One of Broadcom's defenses to Qualcomm's patent infringement claims was waiver (a technical defense based on the involvement of Qualcomm personnel in standards-setting bodies relating to the patents at issue). Bier was not involved in defensive discovery related to Broadcom's waiver claim, but he was involved with preparing a Qualcomm witness. In course of prepping this witness to testify at trial, well after discovery was complete, a search of the witness's computer was conducted, to confirm the answer to what was believed to be a non-controversial question. The search turned up 21 documents of peripheral importance; these documents were immediately brought to the attention of Day Casebeer senior partners, who decided not to produce them.

On the last day of trial, counsel asked the same Qualcomm witness a question that, according to Bier, was asked "inartfully" — in a way that made it sound like Qualcomm lawyers were trying to skirt around an issue. During cross-examination, opposing counsel predictably jumped on the issue. As the courtroom cringed, the witness volunteered that she didn't know about documents on a certain subject "other than the documents I discussed with my attorneys."

This led Broadcom to seek production of the documents in question (which were not privileged). The Day Casebeer attorneys produced those 21 documents later that afternoon — in the middle of trial. Adam Bier was the courier who delivered them from the hotel room to opposing counsel.

After the trial ended (Qualcomm lost), the concerned court ordered the company to figure out what other documents hadn't been produced in discovery. They went back to look for more documents, Bier said, totally unprepared for what they would find.

Many *thousands* of pages came back, including files that were directly relevant to Broadcom's defense of waiver. The magistrate judge blamed the lawyers, and the outside counsel couldn't adequately defend themselves — for example, by explaining the diligent inquiries they had made of Qualcomm witnesses to try and locate relevant information — because the company asserted attorney-client privilege on all communication. The magistrate judge denied the firm lawyers' request to discuss privileged matters based on the self-defense exception to privilege — even though Qualcomm aggressively criticized its outside counsel during the sanctions proceedings.

"'This tied our hands quite a bit," Bier said.

Sanctions were levied, the attorneys were referred to the state bar for investigation, and Bier's career hit a rough patch.

"We'd love to send you to the hiring partner down the hall, but we can't touch you," Bier says he was told more than once by law firms who interviewed him. "We have lots of Fortune 500 clients; they're all freaking out about e-discovery."

Fortunately for Bier and his former colleagues, the sanctions entered by the magistrate judge were ultimately vacated. The district judge vacated the sanctions, based on the due process concerns implicated by Qualcomm Six's inability to defend themselves adequately against Qualcomm's charges, and remanded. On remand, after additional discovery and hearings, the magistrate judge dissolved the order to show cause that started the whole sanctions mess.

Both Frank Cialone and Judge Waxse had some tips for easing out of potentially explosive disputes between counsel. If attorneys start accusing each other of dishonesty in his court — for example, mutual dishonesty in the discovery process — Waxse explains that he is obligated to report unethical activity. He offers them a chance to work out their disputes before he reports them all to the ethics authorities.

Frank Cialone explained that waiving privilege or triggering the self-defense exception to privilege can be easier

than expected. The issue is “accusatory adversity,” which is what was implicated in the Qualcomm proceedings when Qualcomm started leveling accusations against its outside counsel.

Cialone noted how the magistrate judge was angered by exchanges between counsel — ones that some lawyers might see as routine exchanges, pertaining to timing and scheduling — that looked to her like foot-dragging and stonewalling. According to Cialone, when facing potential sanctions, it’s crucial to respond immediately to any concerns and to avoid the appearance of delay tactics.

And if you’re concerned that your client is misleading you, Cialone or Waxse said to remember that you’re entitled to rely on your client for e-discovery document collection, but you’re not entitled to be stupid. Press the client if you smell funny business.

As for Adam Bier, he still isn’t sure how he — a very junior associate at the time of the original events, a “baby lawyer” just a few months into private practice (he joined Day Casebeer out of a clerkship) — got mixed up in the whole mess. Understandably, in view of the nightmare he experienced, he has traded in litigation for a transactional practice.

A few years ago, he started his own practice. So far, so good — in fact, he said his main problem these days is that his business is getting overwhelming. It’s a good problem to have.

As they say, what doesn’t kill you leads to creative thinking and entrepreneurship. Or something like that.