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ABA
AMERICAN BAR ASSOCIATION
**General Practice,
Solo & Small Firm
Division**

**Effective Strategies for Conducting
Electronic Discovery**

**Friday, October 16, 2009
4:00 p.m. - 5:00 p.m.**

**2009 Fall Meeting and
National Solo and Small Firm Conference
October 16 - 17, 2009
Millennium Biltmore Hotel
Los Angeles, CA**

Biographies



Jacques Nack Ngue, Founder and President

Jacques Nack Ngue has almost a decade of experience in complex network infrastructure, database design and software development. He has served as project manager on multi-national cases for both AmLaw 200 law firms and Fortune 500 companies. As the Founder of eClaris, a premier eDiscovery consultancy and service provider, Nack Ngue developed and wrote CaseSafe, document repository software for complex litigation. Jacques is a graduate of the University of Cheikh Anta Diop in Dakar, Senegal and holds several information technology certifications. He is fluent in six languages, including French and German, and is a member of the Information System Audit and Control Association.



Michael Swarz, VP Marketing and Operations

Michael Swarz currently serves as VP of Marketing and Operations for eClaris, Inc. eClaris is an electronic discovery consultancy and service provider dedicated to helping law firms and corporations classify, process and review electronically stored information. Michael is well versed in the state and federal laws that relate to electronic discovery and has written extensively on the subject. His recent article, [The Evolution of eDiscovery Sanctions](#), provides a guide to the penalties a court can impose on those abusing the discovery process and has been published by the American Bar Association. Michael is a graduate of both Brandeis University and New England Law in Boston.



“Spotlight on Electronic Discovery: What Every Attorney Needs to Know”

1. The Importance of Communication
2. Introduction to Electronic Discovery
 - a. Common Challenges
3. Applicable eDiscovery Law
 - a. Federal Rule of Civil Procedure
 - i. Overview
 - ii. Themes
 1. Early Planning
 2. What is Electronically Stored Information (“ESI”)?
 3. Format of ESI Production
 4. Unplanned ESI Disclosure
 5. ESI Safe Harbor and Sanctions
 - b. Case Law
 - i. Duty to Preserve ESI
 - c. California Approach
 - i. Proposed Amendments
 1. Differences from FRCP
 2. Status
 - ii. Case Law
4. The eDiscovery Process and Cost Saving Strategies
 - a. The Sedona Conference
 - b. Electronic Discovery Reference Model
 - i. Information Management
 - ii. Data Identification
 1. Data Map Creation
 - iii. Preservation of Relevant ESI
 - iv. Effective Data Collections
 1. Chain of Custody Considerations
 - v. Data Processing Techniques
 - vi. Document Review Goals
 - vii. Data Analysis Objectives
 - viii. Managing Productions
 - ix. Presentation at Trial
5. Attorney Office Best Practices
6. Lessons Learned

American Bar Association

General Practice, Solo and Small Firm Division

▶ **Spotlight on Electronic Discovery: What Every Attorney Needs to Know**

- ▶ Jacques Nack Ngue, CISA, Founder and President eClaris, Inc.
- ▶ Michael Swarz, J.D., VP Marketing and Operations eClaris, Inc.

- ▶ GP|Solo Fall Meeting
- ▶ National Solo and Small Firm Conference
 - ▶ Los Angeles, CA
 - ▶ October 16 -17, 2009

The Importance of Communicating

“The single biggest problem in communication is the *illusion* that it has taken place.”

---George Bernard Shaw

Agenda

- ▶ The Importance of Communication
- ▶ Introduction to Electronic Discovery
- ▶ Applicable Electronic Discovery Law
 - ▶ Federal Rule of Civil Procedure
 - ▶ Case Law Re: Duty to Preserve Electronically Store Information (“ESI”)
 - ▶ California Approach
- ▶ The Electronic Discovery Process
 - ▶ The Sedona Conference
 - ▶ Electronic Discovery Reference Model
 - Information Management
 - Data Identification
 - Data Map Creation
 - Preservation of Relevant ESI
 - Effective Data Collections
 - Chain of Custody Considerations
 - Data Processing Techniques
 - Document Review Goals
 - Data Analysis
 - Managing Productions
 - Presentation at Trial
- ▶ Attorney Office Best Practices
- ▶ Lessons Learned

Introduction to Electronic Discovery

- ▶ **Discovery** is the process of identifying, preserving, collecting, reviewing and producing information during civil legal actions. The goal of discovery is to obtain information that will be useful in developing relevant information for pre-trial motions and for the trial itself. Discovery can include documents, testimony and other information as required by a court.
- ▶ **Electronic Discovery**, or "e-discovery", is simply the extension of the discovery process to include data in *electronic format* also referred to as Electronically Stored Information "ESI".
 - ▶ Recent University of California at Berkeley Analysis: 93% of all information today is created in an electronic format. Over 70% of electronic data is not printed.
 - ▶ Becoming more important in the context of civil litigation with roughly three out of four discovery orders today requiring email to be produced as part of the process.
 - ▶ "It is black letter law that computerized data is discoverable." Anti-Monopoly v. Hasbro, 1995 WL 649934 (S.D. N.Y.)
- ▶ **Common ESI Challenges:**
 - ▶ ESI can be incomprehensible when separated from the systems that created it
 - ▶ ESI is dynamic, in many cases can be shifted just by turning a computer on and off
 - ▶ ESI is stored in much greater volume than paper documents
 - ▶ ESI includes Metadata, commonly referred to as "data about the data," which conveys when, how and by whom the ESI was accessed, collected, modified and created.

Federal Rules of Civil Procedure

- ▶ Objective
 - ▶ FRCP provide the roadmap for civil litigation
- ▶ Amendments
 - ▶ FRCP was amended in December 2006 to include electronic evidence
- ▶ Order
 - ▶ Laid out in chronological order of legal process
- ▶ Goal
 - ▶ How to incorporate ESI to the discovery process

FRCP Theme #1: Early ESI Planning

- ▶ a. Meet and Confer Conference (Rule 26 (f)) must include
 - ▶ Mandatory discussion of any issues “relating to disclosure or discovery of electronically stored information, including the form or forms in which it should be produced.”
 - ▶ Issues relating to preserving discoverable information
 - ▶ Privilege claims including “any agreed upon procedure to assert these claims after production.”
 - ▶ Any party negotiated “quick peek” or “claw back” agreements

- ▶ b. Pretrial Scheduling Court Order (Rule 16)
 - ▶ Court “scheduling order may also include...provisions for disclosure or discovery of electronically stored information”

- ▶ c. Depositions (Rule 30 (b)(6))
 - ▶ These depositions give attorneys the opportunity to directly question the opposing side about the elements of the case and requires them to answer your questions.
 - ▶ Key plaintiff weapon
 - ▶ Leverage this opportunity to learn about the opposition’s electronic data by deposing most knowledgeable person

- ▶ d. Duty of Early ESI Disclosure (Rule 26 (a))
 - ▶ “without awaiting a discovery request”
 - ▶ For each claim and defense
 - ▶ 26(a) initial disclosures must include:
 - ▶ “a copy of, or a description by category and location of, all . . . electronically stored information. . in the possession, custody, or control of the party...that the disclosing party may use to support its claims or defenses”

FRCP Theme #2: What is ESI?

Common ESI Locations

- ▶ Computers hard drives (desktops and laptops)
- ▶ Email systems
- ▶ Portable devices such as Blackberries, cell phones, PDA's, flash drives, CD-ROM's etc.
- ▶ Voice Mail and VOIP
- ▶ Typical work files such as WORD, Word Perfect, Excel, Adobe, Etc.
- ▶ All company servers: Shared, Individual, User Specific General Company
- ▶ Third party and offsite systems
- ▶ Preceding company systems such as backup tapes

Rule 26(b)(2): Accessible v. Inaccessible ESI

Sliding Scale

- ▶ Most Accessible ESI: Online data, detachable media
- ▶ Mid Level Accessible: Archived data, backup tapes
- ▶ Least Accessible ESI: Damaged Data; erased or fragmented data.

When to Produce

- ▶ If Accessible, must produce unless good cause / undue burden. Cost shifting more likely. Toshiba
- ▶ If Inaccessible, no production unless court order

FRCP Theme #3: Format of ESI Production

▶ **FRCP Rule 34**

▶ Parties choose the form for production

- ▶ Requesting party can specify the “form” for ESI to be produced, but other party can object
- ▶ If form not specified by requesting party, “must” produce in the form “in which it is ordinarily maintained” OR “reasonably usable” form

▶ Parties need not produce in more than one form

▶ Importance

- ▶ Be proactive to prevent default format
- ▶ Can impact scope and cost of later data processing and review to be conducted

FRCP Theme #4: Unplanned ESI Disclosure

▶ **FRCP Rule 26(b)(5)**

- ▶ If privileged information inadvertently produced, producing party may notify receiving party
 - ▶ Receiving party “must” then “promptly return, sequester, or destroy” the specified materials and cannot use or disclose the materials until the claim is resolved
 - ▶ Receiving party “may promptly present” the information to the court under seal to test the privilege
- ▶ Claw Back/Open Peak/Quick Peak
 - ▶ These arguments can be asserted whether or not producing party notified

FRCP Theme #5: ESI Safe Harbor/Sanctions

▶ Rule 37

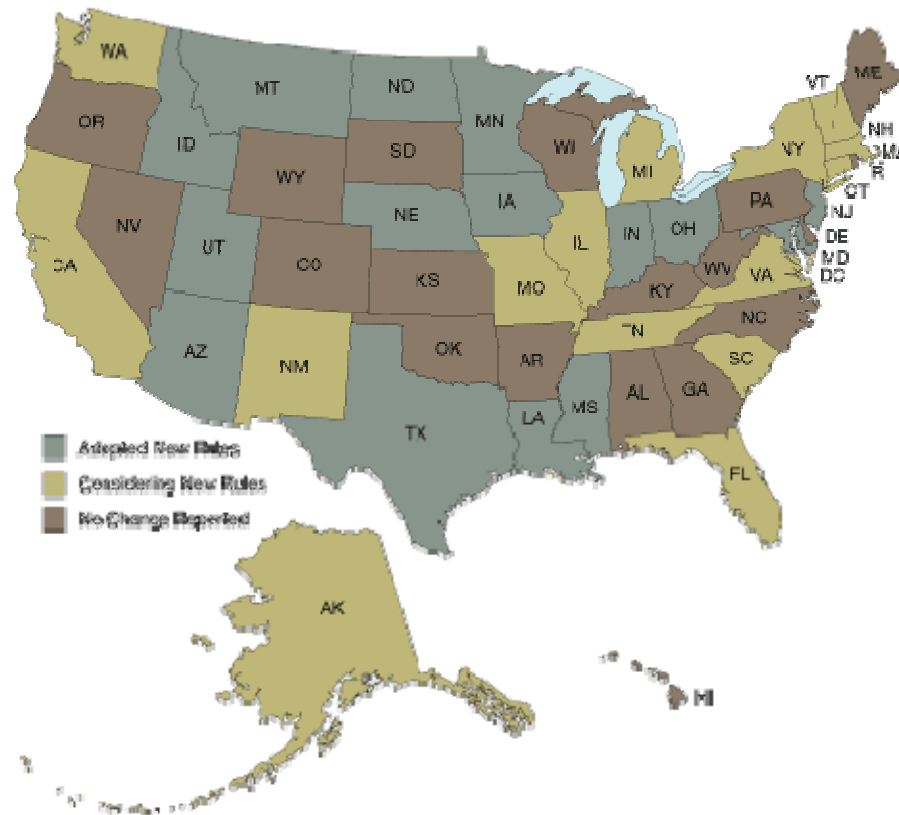
- ▶ Safe Harbor: “Absent exceptional circumstances, sanctions cannot be imposed for loss of electronically stored information resulting from the routine, good faith operation of an electronic information system”
 - ▶ Good faith test: Duty to preserve met? Litigation hold executed and monitored?
- ▶ Common Sanctions:
 - a. **Monetary**: \$29 million in discrimination case. Zubulake v. UBS Warburg LLC, 2004 WL 1620866 (S.D.N.Y. July 20, 2004)
 - b. **Attorney Fees**: Attorney fees in ERISA case. Wachtel v. Health Net, Inc., 239 F.R.D. 81 (D.N.J. 2006).
 - c. **Evidence Preclusion**: Testimony barred. United States v. Philip Morris USA Inc., 2004 WL 1627252 (D.D.C. July 21, 2004)
 - d. **Adverse Inference**: Jury to infer emails deleted harmful to defendant; Zubulake V
 - e. **Default Judgment**: QZO Inc. v. Moyer, 594 S.E.2d 541 (S.C. Ct. App. 2004)
 - f. **Code of Ethics**: Attorneys referred to the California State Bar for violations of their ethical duties. Qualcomm, Inc. v. Broadcom Corp., Case No. 5cv1958(BLM)(S.D.Cal.)(January 7, 2008)

Eight Ways The Duty To Preserve Relevant Materials May Arise

- ▶ **1. When litigation/investigation is reasonably anticipated** Fujitsu v. Fed. Express 247 F.3d 423, 436 (2d Cir. 2001)
- ▶ **2. When a Summons/Complaint are properly received** Byrnie v. Town of Cromwell 243 F.3d 93, 108 (2d Cir. 2001)
- ▶ **3. When agents know that a lawsuit is a possibility** Zubulake v. UBS Warburg, 217 F.R.D. 309 (S.D.N.Y. 2003)
- ▶ **4. When counsel anticipates a lawsuit or investigation** Capellupo v. FMC Corp., 126 F.R.D. 545 (D.Minn. 1989)
- ▶ **5. When established facts suggest that litigation is likely** Computer v. Fundware, 133 F.R.D. 166, 168 (D. Colo. 1990)
- ▶ **6. When receiving a letter that credibly threatens litigation** Fujitsu v. Fedl Express 247 F.3d 423, 436 (2d Cir. 2001)
- ▶ **7. When a plaintiff files a lawsuit** Struthers Patent Corp. v. Nestle Co., 558 F. Supp. 747, 758-59, 765 (D.N.J. 1981)
- ▶ **8. When a business is first on notice** Zubulake v. UBS Warburg, 217 F.R.D. 309 (S.D.N.Y. 2003)

What are the States doing?

▶ Source: Law Technology News



California Approach

ELECTRONIC DISCOVERY ACT

- ▶ The Electronic Discovery Act amends the California Code of Civil Procedure's Civil Discovery Act to address electronically stored information (ESI) in CA. The Act is mostly parallels the FRCP.
- ▶ Three Key Ways How They Would Differ From FRCP
 - ▶ **A. Scope:** The FRCP avoids defining what exactly comprises ESI. The Electronic Discovery Act categorizes ESI as having "electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities." –limitation?
 - ▶ **B. Data Produced Inadvertently:** The FRCP has formal procedures regarding inadvertently produced privileged information (Claw Back, Open Peak). California does not; court to make determination.
 - ▶ **C. Inaccessible Data:** The FRCP requires *requesting party* to seek leave of court to force the opposing party to produce inaccessible data. California puts the burden on the *responding party* to request a court order to prevent producing information on the grounds that it is inaccessible.
- ▶ Ratification
- ▶ The amendments to CCP's 2016.010 et seq. were approved in April 2008 by Judicial Council of California and signed by the Governor in July 2009.
- ▶ The Act contains an urgency clause to make it law effective immediately.

California Case Law

- ▶ eDiscovery case law that is particular to California has by and large been confined to one case, Toshiba, which deals with cost-shifting. Toshiba American Electronic Components, Inc. v. Superior Court (Lexar Media), 124 Cal.App.4th 762 (2004).

- ▶ A. The Facts
- ▶ Defendant Toshiba withheld from production hundreds of computer backup tapes. According to Toshiba's eDiscovery expert restoring and processing the tapes and searching them for relevant data would cost between \$1.5 and \$1.9 million. Plaintiff Lexar would not agree to shoulder any of that cost on the grounds that it would be unfair because the tapes required specialized tools to access them.

- ▶ B. The Outcome
- ▶ The court concluded that Plaintiff Lexar must pay the "reasonable expense" for any "necessary translation" of electronic evidence that had been archived. The court stated that reasonableness and necessity are factual issues to be determined by the court on a case by case basis.

- ▶ C. The Lessons
- ▶ **Demanding Parties:** Have demands as narrowly tailored as possible. Courts have frequently punished overbroad demands with having to pay additional costs.
- ▶ **Responding Parties:** Organize data prior having to prove that the expenses of accessing their data are reasonable.
- ▶ **Both Parties:** Update backup and archival procedures to eliminate contentions that the costs to access them are unreasonable and should not be shifted.

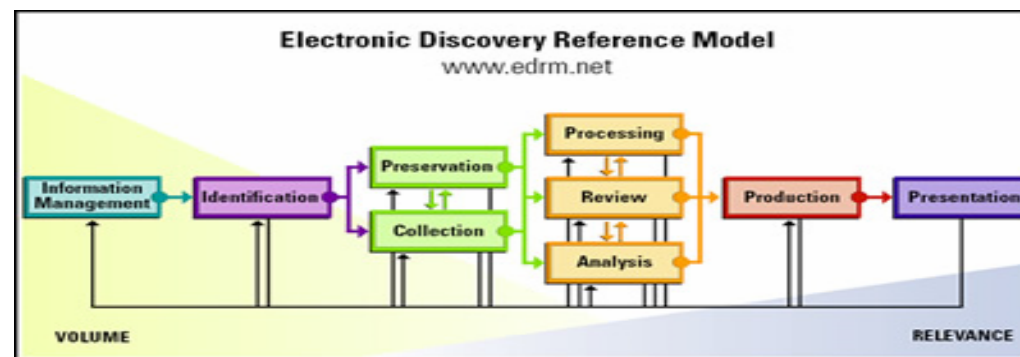
Electronic Discovery Models

▶ The Sedona Principles

- ▶ Best practices developed by a group of attorneys, technical consultants, members of the judiciary and other interested parties to address ESI in civil litigation.
- ▶ Cited by U.S. courts as authority for virtually every aspect of eDiscovery, including, preservation orders, the production of metadata, claw back agreements, and spoliation.
- ▶ Contains practical glossary of terms related to ESI.

▶ The EDRM Model

- ▶ Sets industry standards for Electronic Discovery consumers and providers in order to reduce the cost, time and manual work associated with eDiscovery.



Information Management

- ▶ The Information Management stage involves the organization of ESI data to minimize risk and expenses should eDiscovery issues arise. Proactive first steps. Filter data down to Presentation.
 - ▶ Address:
 - ▶ Full ESI Record Cycle: creation, retention and management
 - For each cycle ask about: Duration, Format, Laws, System Compliance & Storage
 - ▶ Common Questions: Pay close attention to Email Deletion, Back Up Tapes & Metadata
 - ▶ Attorney Role: (a) Review companies policies (b) Assess legal risks of ESI and (c) Provide guidance on retention *schedules*
 - ▶ eDiscovery Consultant Role: (a) Gather ESI info (b) Provide guidance on retention *methods*
 - ▶ LOB: Records Management Expert, Senior IT Specialist, IS auditor
 - ▶ Companies Slow to Act: (Cohasset Survey, 2007)
 - ▶ Only 60% have comprehensive records retention schedules in 2007 that include ESI
 - ▶ Only 56% have a formal plan to respond to discovery requests for their records.
 - ▶ Only 14% of companies *always* follow their retention schedules, while 50% generally do so.
 - ▶ Faulty Information Management Policies:
 - ▶ Create substantial risk and additional expenses for the corporation and its employees
 - Important in light of the SOX Act and expanded court interest in corporate conduct.

Identification

- ▶ Identification involves creating a Data Map
 - ▶ Attorney Role: Interview key personnel
 - ▶ eDiscovery Consultant Role: (a) Verify personnel input and (b) Create data map
 - ▶ LOB: Auditor, Computer forensic expert

- ▶ Include in Data Map
 - ▶ A. Mediums that may contain ESI (See FRCP Theme 2 for list)
 - ▶ B. Custodians that may be connected to the ESI
 - Data creators
 - Data managers
 - People who had access to the data

- ▶ How to create an effective ESI data map
 - ▶ **A. Be Proactive**: Courts punish those who push off their data map with costly sanctions.
 - ▶ **B. Work With Key Personnel**: Seek out the principal owners, IT professionals and those involved with records coordination and management.
 - ▶ **C. Create a Flexible Document**: Since the discovery process remains fluid it is important to create a data map that can adapt to how the ESI is being stored. Also ensure the data map is understandable to all players: lawyers, judges and IT.
 - ▶ **D. Focus on Potentially Relevant Information**: Zone in on the type and scope of all the existing potentially relevant data, how that data is stored/preserved & who created the data.

Preservation

- ▶ Preservation: Assuring that relevant ESI is properly retained and not destroyed. (Previewed in IM stage)
 - ▶ Attorney Role: (a) Issues litigation hold notices and (b) Enforces litigation hold notices
 - ▶ eDiscovery Consultant Role: Implement the systems to enforce litigation hold
 - ▶ LOB: Senior IT and Computer forensic expert

- ▶ Responsible Persons
 - ▶ – “[The obligation to preserve evidence runs first to counsel, who then has a duty to advise and explain to the client its obligations to retain pertinent documents that may be relevant to the litigation.” Telecom Int’l Am., Ltd. v. AT&T Corp., 189 F.R.D. 76, 81 (S.D.N.Y. 1999)
 - ▶ – Courts have found that obligation to preserve runs also to senior corporate officers In re Prudential Ins. Co. of Am. Sales Practices, 169 F.R.D. 598 (D.N.J. 1997)

- ▶ Procedure to Preserve Relevant ESI
 - ▶ **If Proactive/Offensive**: Compose a Litigation Hold Notice
 - Be Thorough: State kind of data sought and ask where the data is located
 - Notify appropriate owners, administrators, users
 - Include acknowledgment of receipt
 - Incorporate compliance and tracking features to monitor the litigation hold

 - ▶ **If Reactive/Defensive**: Receiving a Preservation Letter From Opposition
 - Establish what ESI is reasonably accessible
 - Determine the cost to comply
 - Maximize early Meet and Confer conference to negotiate the scope of discovery

Collection

- ▶ Collection Plan

1. List all key custodians

2. Note location of custodian data

- ▶ Active: Reside on computer hard drive/other storage device. Ex. Email, Word, Excel [Accessible]

- ▶ Archival: Reside on medium that needs to be restored. Ex. backup tapes, floppies and optical media data

- ▶ Forensic: Reside on media that has been damaged or erased [Inaccessible]

- ▶ Paper

3. Ensure that those who execute the collection maintain data integrity

4. Supervise the collection and monitor Chain of Custody

- ▶ Record who, what, where, when, why and the outcome.

- If possible, interview custodians to learn where they keep their documents

- Keep a description of the business guidelines and procedures

- ▶ Attorney Role: Provides the scope of the collection effort

- ▶ eDiscovery Consultant Role: Collects the data using appropriate methods, forensic or not

- ▶ LOB: Senior IT and Computer forensic expert

Processing

- ▶ Processing involves taking often large amounts of ESI & boiling it down to potentially relevant information.
 - ▶ The hidden data relationships that are uncovered make review by the legal team substantially easier.
 - ▶ Files are amassed into a central database to allow for large-scale searches of the complete data set.
 - ▶ Hard drives, laptops, CD/DVD, thumb drives and backup tapes are examples of data to be processed.

- ▶ Attorney Role: (a) Provide information regarding production formats as decided during the 26(f) conference (b) Sets internal document review system specifications (c) Assembles review team (d) Determines objectives

- ▶ eDiscovery Consultant Role: (a) Processes and covert data according to attorney requirements (b) Advise collaboration between both parties to resolve technical issues

- ▶ LOB: Data specialists and Project manager (paralegal, contract attorney etc.)

- ▶ **Common Steps**
 - ▶ Catalog and signature the files
 - ▶ Uncompress any compressed files
 - ▶ Flag duplicate files
 - ▶ Remove content and metadata
 - ▶ Deal with exceptions
 - ▶ Transfer all ESI to a viewable platform
 - ▶ Eliminate program and operating system files
 - ▶ Sort the ESI by file type and other criteria
 - ▶ Establish quality control procedure throughout

Review

- ▶ Document Review Goals
 - ▶ Determine purpose of review and implement benchmarks
 - ▶ Note privileged/responsive documents to be withheld from the opposing parties
 - ▶ Capitalize on the productivity of the document reviewers
 - ▶ Agree on search terms and review methods/tools

- ▶ Document Review Platform Considerations
 - ▶ Time and cost
 - ▶ Culling and filtering options to minimize the data
 - ▶ Concept search ability (diamond v. diamond)
 - ▶ Capacity to handle various document volumes and formats
 - ▶ Reviewer familiarity
 - ▶ Safe Harbor requirements when working with off-shore teams
 - ▶ Data security and integrity
 - ▶ Overall project management lead

- ▶ Attorney Role: (a) Sets cost allowance (b) Selects platform (c) Pays attention to redaction features
- ▶ eDiscovery Consultant Role: Monitors availability production schedules and formats
- ▶ LOB: IT specialists, data specialists

Analysis

- ▶ Analysis is the process of evaluating a collection of electronic discovery materials to determine relevant summary information.
 - ▶ Examples: Key topics of the case, important people, specific vocabulary and jargon, and important individual documents.
 - ▶ Helps with important early decisions and improves productivity.
 - ▶ Performed throughout the remainder of the process as new information is uncovered and issues of the case evolve.
- ▶ Attorney Role: (a) Provide objectives (b) Select expert witnesses and (c) Appoint special masters
- ▶ eDiscovery Consultant Role: (a) Carries the assignment and (b) Provides objectives
- ▶ LOB: Senior IT and Computer forensic expert

Production

- ▶ Production is the procedure of conveying non-privileged, relevant ESI to opposing parties

- ▶ Formats of Production
 - ▶ Paper
 - ▶ Quasi-Paper
 - ▶ Native
 - ▶ Quasi-Native

- ▶ Frequency of Production
 - ▶ On going basis OR All in one shot

- ▶ Model Rules of Professional Conduct Ethical Production Considerations
 - ▶ No knowing concealment MRPC 3.4(a)
 - ▶ Preserve client confidences MRPC 1.6(a)
 - ▶ Fairness to opposing party & counsel MRPC 3.4

- ▶ Attorney Role: Sets production date and format with opposing counsel and court
- ▶ eDiscovery Consultant Role: Creates production volumes
- ▶ LOB: Data specialists and Project manager (paralegal, contract attorney etc.)

Presentation

- ▶ Presentation involves the displaying of ESI before an audience.
 - ▶ Most common forums are at depositions, hearings and trials
 - ▶ Native and near native are the dominant forms.

- ▶ Options to display ESI at trial
 - ▶ Proprietary systems: Trial Director, Sanction and Trial Max
 - ▶ Outsource to major vendors
 - ▶ For smaller cases, can use power point or Adobe

- ▶ Additional effective presentation tools
 - ▶ Animations
 - ▶ Graphics and demonstratives
 - ▶ Videotape
 - ▶ Blowups
 - ▶ Physical samples/models

- ▶ Attorney Role: (a) Select relevant information to present and (b) Determine how to present it
- ▶ eDiscovery Consultant Role: (a) Create presentation and (b) Assist with execution
- ▶ LOB: Trial presentation, graphic designers

Office Best Practices

1. Form interdisciplinary team to proactively address potential discovery issues.
 - ▶ In house attorneys
 - ▶ Outside counsel
 - ▶ Corporate IT
 - ▶ Records management personnel
 - ▶ Others professionals as necessary (Compliance, LOB's, Audit)
2. Engage IT department for targeted programs and solutions.
 - ▶ Strong focus on litigation readiness and response planning
 - ▶ Education programs (legal and compliance) designed for in-house technology professionals
 - ▶ Development of formal legal hold procedures for ESI
 - ▶ Modification of existing retention programs to include ESI
 - ▶ Designation of eDiscovery liaisons
 - ▶ Identification and classification of ESI repositories (see Data Mapping)
3. Investment in technology strategies to manage discovery cost and minimize risk.
 - ▶ Email archiving systems
 - ▶ Forensic data collection systems
 - ▶ Shared document repositories for serial litigation
 - ▶ Pre-negotiated vendor contracts for collection, processing, and hosting of discovery data

Lessons Learned

1. Awareness of Applicable Law
2. Maximize Meet and Confer Conference
3. Create an ESI Data Map
4. Proactive Approach Throughout
5. Focus on Potentially Relevant, Accessible Data
6. Sources of Custodian Data
7. Maintain Chain of Custody
8. Interview Key Personnel
9. Carefully Select Document Review Platform
10. Protect Client Data

eDiscovery Resources

- ▶ eDiscovery Law:

www.ediscoverylaw.com

- ▶ Electronic Discovery Research Model (EDRM):

www.edrm.net

- ▶ Findlaw's Legal Technology Center:

www.technology.findlaw.com

- ▶ The Sedona Conference:

www.thesedonaconference.com



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