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For the Defense

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Technology

A LITIGATION NECESSITY
Electronically Stored Information (ESI) Review Tools

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Focusing on early data reduction is crucial to saving time and money.

By now every lawyer should know that a revolution in litigation has taken place. With the advent of the digital age courts and litigants have struggled to keep up with the explosion of electronically created evidence. Judges and lawyers have been forced to learn the language associated with the electronic world: computer systems, electronic documents, metadata, gigabyte (GB) and electronically stored information (ESI). Today, almost every claim involves some form of electronic evidence.

As awareness of ESI grows, more lawyers push for e-discovery. As a result, wide classes of cases now suddenly seem rife with e-discovery disputes. One laptop computer containing a modest 50 GB hard drive can easily hold the equivalent of...

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... results that allow for responsive e-discovery and preserve confidential designations. Assume a law firm must review in four weeks 50 GB of data reduced to the equivalent of 1.1 million printed documents. The average hourly attorney review rate is \$200 per hour. At 60 drph (documents reviewed per hour), the review would take 110 reviewers. The firm would incur approximately \$3.5 million in review costs alone. How can the firm achieve significant savings while improving the quality of its work product? It is not necessarily about the sizzle in your review tool; however common sense technological tools can reduce an ESI data set. Calculating the time saved, or savings in “clicks per hour,” if you use search and retrieval software is uncomplicated. Focusing on early data reduction is crucial to saving money.

E-Discovery Research

A reliable and legally defensible science grounded in automated “smart” or “intelligent” review tools is being developed, studied and tested. These research projects involve computerized tools which compare and review all case e-documents to determine what is privileged in a data set. One such effort is the Trec Legal Track, a research effort to study the e-discovery review process to evaluate the effectiveness of a wide array of search methodologies. The project originated with the national Institute of Standards

and Technology's Text Retrieval Conference. This evaluative process is open to participation by academics, law firms, corporate counsel and companies providing ESI discovery services. The project is...

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...n, is also dedicated to resolving electronic discovery challenges by conducting studies of litigation processes that incorporate modern technologies. The institute's independent advisory board is composed of judges, lawyers and technical experts. Its studies will be shared publicly at no charge. An inaugural study is underway to compare relevance review technologies with traditional document review processes. See [http:// www.ediscoveryinstitute.org/](http://www.ediscoveryinstitute.org/).

A litigant should work to narrow the scope of production and then work to exclude from production clearly irrelevant data, to avoid processing additional non-responsive data. Before subjecting a data set to the stages of e-discovery outlined by the Electronic Discovery Reference Model, thought should be given to data reduction and whether all extraneous non-responsive data has been removed. See *Electronic Discovery Reference Model*, [http:// www.edrm.net/index.php](http://www.edrm.net/index.php). Often, data reduction is not conducted before e-discovery review. Data in this phase of discovery does not need to be “processed” in the traditional discovery sense. Rather than extraction of full text, metadata, and conversion to an image file, most of the time it is sufficient to index the files using a variety of methods or search software tools. When you deal with sorting and categorizing data using search and retrieval software prior to review, you eliminate processing and review costs.

Developing the best analysis and data reduction strategy begins by establishing a defensible methodology for all techniques. The ultimate goals are to reduce costs and ensure you have the data you need for fast, efficient review and production.

Some of the methods for data reduction involve, but are not limited to:

- Culling of computer system and application files
 - Filtering by file location and/or custodian
 - Filtering by file type and/or date
- Advanced elimination of duplication and elimination of near replication techniques
 - Search term filtering and pre-categorization

Computer forensics can be used to reduce a universe of data to a more manageable subset, without overlooking potentially significant data. Forensic images of the data in question are created so the integrity of the original data/metadata is preserved. Data reduction strategies are then implemented to remove duplicate files, system files and other data. Data reduction may be based on key words, file types, identification (headers/extensions), data patterns, date ranges and metadata values. While computer forensics can be applied to any situation in which you need to make sense of e-discovery, there are certain situations where it offers definite advantages. For example, forensics will allow for a search across an entire hard drive or logical partition, quickly finding only those documents most likely to be responsive.

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The bottom line is that ESI review is not about the review platform or the technology involved as much as it is about reducing the volume of ESI exchanged in discovery. Regardless of the volume, however, until a court-approved search and automated review process is created and approved, prudent counsel...