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# Litigation Support Technology as a Value Foundation for Clients

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# The Relevant Facts – Part 1

- **Client = Mega Pharma**
  - Recently merged with NewCo.
- **Two pending suits re: potency of drug manufactured by NewCo.**
  - FDA Injunction, seeking to close manufacturing plant.
  - Class Action re: deceptive marketing practices.
- **People**
  - Current in-house counsel is not experience in e-discovery
  - Prior NewCo in-house counsel, who knew e-discovery, laid off.

# The Relevant Facts – Part 2

- **Systems Information**
  - Mega Pharma has Outlook, no archiving.
  - NewCo has Symantec Enterprise Vault.
  - Reason to believe that key custodians may have deleted/modified data.
- **Litigation Hold has been distributed.**
- **Cost is a significant consideration.**

# Litigation Hold

## Brute Force

- Send litigation hold to as many people as possible (entire NewCo and Mega Pharma).
- Word litigation hold as broadly as possible to get maximum scope.
- Suspend auto-delete as broadly as possible.

## “New Way”

- Attempt early case assessment – figure out which custodians and data actually matter.
- Use early case assessment to create litigation hold list (just relevant custodians at each company).
- Consider approaching opposing counsel to seek agreement re: search terms for preservation purposes.
- Consider using sampling as a way to test search terms or as the basis for cost-shifting.

# Forensic Acquisition: What

## Brute Force

- Do a forensic acquisition of all data stores.
- Even if you don't end up restoring all data stores, you have them preserved as pristinely as possible.
- Acquire custodian's full data stores – esp. for unstructured data (e-mail and electronic documents).
- In Enterprise Vault search for all documents that are sent to/from (incl. cc and bcc) to any of your custodians.

## “New Way”

- Consider acquiring only active user created files for most custodians/data.
- Consider seeking agreement from opposing counsel that there is no need to preserve or produce from unallocated space.
- Seek agreement re: search terms, acquire only data that is responsive to search terms (even in Enterprise Vault).
- Only use expensive, time consuming, forensic techniques and acquire full data stores when absolutely necessary (e.g. for the custodians who are suspected to have modified/deleted data).

# Forensic Acquisition: Who

## Brute Force

- Use a vendor for all acquisition.
- Vendor can then testify, if necessary.

## “New Way”

- Client should consider whether it makes sense for them to develop in-house capability to handle acquisition.
- Use vendor for key, potentially disputed, acquisitions (e.g. significant or questionable custodians).

# Pre-Review Culling

## Brute Force

- Basic Boolean searches to segregate data (e.g. likely not relevant or potentially privileged).
- Use standard de-duplication technology as part of your data processing, to group or eliminate exact duplicates.
- Convert data to .tiff before loading it into review tool

## “New Way”

- Consider first-look tool to do more robust searching and clustering of documents.
- Consider negotiating search terms with opposing counsel (if you didn't already at preservation/acquisition).
- Consider using “near-dup” technology, in addition, to standard de-duplication, to group or eliminate near duplicates.
- Consider native review capable tool.

# Review Tool Selection

## Brute Force

- Host data internally to gain control over the data, and also potentially to limit costs.

## “New Way”

- Match review tool to the needs/goals of the review.
- Since human review costs are likely to be one of the biggest ticket items, consider review tools that may enhance the efficiency of your review (e.g. concept clustering).

# Review Process

## Brute Force

- Use either custodian list or basic searches to prioritize review set.
- Slog through documents, making sure that each document is viewed at least once.
- Use contract attorneys to do the bulk of the review and use staff attorneys/associates to supervise the review.

## “New Way”

- Consider whether you can consider using more sophisticated technologies (e.g. auto-tagging) to avoid looking at all the collected data.
- If not, consider whether you can make use of more sophisticated review technologies (e.g. concept clustering) to at least prioritize your review.
- Deploy resources in the most efficient way possible – higher cost resources to more important documents/data.

# Production Format

## Brute Force

- Produce in fixed format (paper or .tiff/.pdf).
- Load file containing metadata selected by producing party.

## “New Way”

- Advance negotiation of metadata fields to be produced.
- Production in native format is possible – if you also produce unique hash value for each file produced.

# Production Quality Control

## Brute Force

- Use tags to segregate data such as privileged or redacted.
- Final review of most or all of documents to be produced.

## “New Way”

- Develop documented and repeatable production QC process.
- Conduct targeted searches (and possibly create a segregated database) to make sure your review has properly identified privileged and redacted documents.
  - Priv: Names, Firms, Terms.
  - Redaction: Terms and overlay QC.
- If QC process is sufficiently tested, no final pre-production review is required.