



E-Discovery Issues: Heading your way...

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Electronic Evidence: Converting Paper to Bytes

1 file box	=	2,500 pages	=	137 megabytes
1 four drawer file cabinet		10,000 pages		550 megabytes
10 file boxes		25,000 pages		1.4 gigabytes
1,000 file boxes		2.5 million pages		137 gigabytes

- Average new desktop computer stores 80 gigabytes
- 80 gigabytes = 1,440,000 pages of information



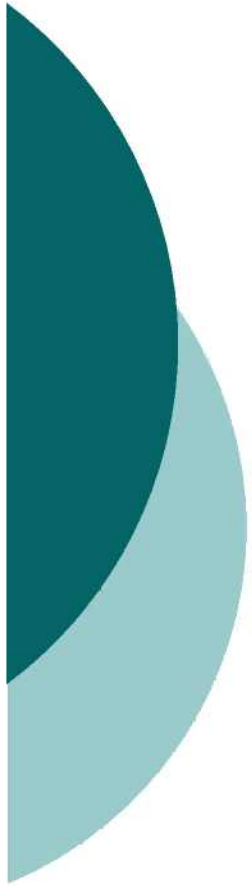
Electronic Evidence: The Volume Gets Bigger

- More storage capacity
- 98% of all documents saved electronically
- 7 trillion e-mails this year
- “Deleted” is a misnomer



Electronic Evidence Raises Issues

- How far do you have to search?
- What do you have to preserve?
- What do you have to produce?
- Who should bear the cost?



Preserving Electronic Evidence



Preparing Electronic Evidence

- What should be occurring before the attorneys get to your Court Room:
 - Identify all responsive information
 - Identify how that information is stored
 - Preserve information
 - Discuss how electronic evidence will be produced
 - Parties should confer early to address and resolve electronic discovery issues



Preserving Electronic Evidence

- Preserve first – print later
- Identify all servers or mainframes that might have responsive information
- Identify everyone who has knowledge of relevant facts and search their hard drives or other computer devices
- Cooperate with company IT Dept.
- Suspend all deletion programs
- Notify employees (e-mail might not be enough)
- What about home computers? Hand held devices? Cell phones?
- What about backup tapes?
- Make arrangements to properly copy all electronic information
- Hold residual data – at least for a while
- Image all hard drives with hash marks



From Preserve to Produce

- Search and save responsive information
 - Run queries with key word searches
 - Eliminate docs outside relevant date range
 - Eliminate duplicates
 - Protect privileged Communications
- Image and Hash



Failing to Preserve Electronic Evidence

- When a lawsuit is under way or even when a lawsuit can be reasonably anticipated = Spoliation.
- Deleting electronic evidence will occur in normal use/ordinary use:
 - Daily use of computers inevitably leads to loss of data
 - E-mail auto delete
 - Booting may overwrite certain data – particularly temp files
 - Clean up software
 - Efforts to protect data
 - Back-up tapes
 - Image copying (cloning) hard drives



Preserving Electronic Evidence (Contd.)

- Analyzing the litigant's policy of retaining electronic evidence
 - Did the party have an official written policy? Was it followed?
 - Does the policy facilitate a legitimate business interest?
 - Are "good" documents just as likely to be destroyed as "bad" ones?

