

FOLEY EXECUTIVE BRIEFING SERIES



**Practical Approaches to
Managing Electronic Evidence**

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The Problem

“The reality of electronic discovery is [that] it starts off as the responsibility of those who don’t understand the technology, and ends up as the responsibility of those who don’t understand the law.”

-- C. Ball, *The Perfect Preservation Letter*, April 2005



The Solution: People, Process, Technology

- Effective E-discovery requires on-going input from a collection of people with varying skill sets
- Structure may vary with variety of internal and external inputs, but a consistent, comprehensive, cost-effective, defensible process is required
- Technology can solve many of the problems created by volume of electronic records



Five Ways to Train Employees

- Train Senior Management
- Train In-house Legal Department
- Train IT Representative
- Train Business Representatives
- Train Trial Counsel: www.foley.com



Pre-Litigation Procedures

- Set up the structure
- Criteria for use of inhouse personnel and outside resources
- Pre-qualify vendors/technologies
 - FEDDS/Relativity: www.kcura.com
- Contractual terms for vendors
- Data retention and destruction policies
- Data recovery procedures and costing methods
- Litigation hold systems



Litigation Holds

- Two types of cases require different approaches
 - You are the archeologist: – The case dealing only with past events
 - You are the ringmaster: -- The case involves the ongoing creation of documents and messages.



Six Questions: Historic Data

- What types of electronic data does the company have or have access to?
- Who has access to or control of each subject of hardware, software and data?
- Where are the hardware and people located?
- What hardware, software and procedures are used to collect, access, archive, backup and restore the data?
- When do these activities occur?
- How are they carried out?



On-Going Matters

- How can the company maintain relevant emails in ongoing matters without bringing company business to a halt or saving everything?
 - An email vault system for persons of interest
 - Procedures to retain other documents
 - Dynamic data



Hold Procedures

- Notification
- Reminder
- Audit
- Termination

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Questions?



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