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In the News

LexisNexis U.S. has acquired **Interface Software Inc.** The move will add InterAction client relationship management to the Lexis fold, which already includes Martindale-Hubbell and LexisNexis CourtLink. **Page 42**

SmartDraw 7: Graphics software helps attorneys create professional flowcharts, diagrams and more for the courtroom. **Page 3**

Ultimate Conferencing: From Aspen Conferencing Inc., it is a package of audio, web and video conferencing services. **Page 7**

Correction: The December 2004 Law Technology News was incorrectly labeled as volume 10. It is volume 11.

INSIDE LTN



EDD SHOWCASE: E-discovery is growing, and is not just for big firms. **Page 20**

IT @: Adding remote access to a small firm. **Page 11**



RECRUITING: Should you hire consultants, or build your own tools? **Page 36**

TECHNOLOGY ON TRIAL: When do you accept help? **Page 14**



WEB WATCH: Online CLE programs can save money and time. **Page 71**

PRESIDENT'S CORNER

Summation SSE

SUMMATION Legal Technologies Inc. (www.summation.com) has introduced its **Summation SSE suite**.

The new software includes both a local application (Summation iBlaze SSE) and a web-based application (Summation WebBlaze SSE), all powered by a Microsoft SQL Server. The suite combines the power of a SQL database with the familiar Summation interface, says president Jon Sigerman. New features for mega-cases include tools for volume document coding and enhanced production tools.

Summation's litigation hosting service includes e-billing, matter management, e-discovery and litigation support.

In related news, Summation, headquar-



Summation President Jon Sigerman.

tered in San Francisco, was just acquired by Wolters Kluwer Corporate & Financial Services division, and is now part of CT Corp. (See page 42.)

Reader Response No. 300.

ELECTRONIC DISCOVERY

Sherpa Search for Lotus

SHERPA Software Group (www.sherpasoftware.com), of Bridgeville, Pa., says **Discovery Attender for Notes** searches

.NSF files for items that match criteria entered by the administrator. The results can be isolated in a Domino database or exported to XML for viewing through a web browser.

Reader Response No. 301.

ELECTRONIC DISCOVERY

RenewData Manages Archives for Litigation

RENEWDATA, based in Austin, has introduced its **Managed Preservation Archiving Service**

that helps firms assess legal exposure and prepare for discovery requests. The service builds an active, searchable data archive on the ActiveVault platform by storing data for future litigation.

The archive can also be built as electronic evidence is gathered from specific matters for later reuse. Supported backup software includes EMC Corp.'s Legato and IBM Corp.'s Tivoli.

The company's website is www.renewdata.com.

Reader Response No. 302.

COURT DOCKET

Deadlines for Small Firms

LOS ANGELES-based **Deadlines on Demand** (www.deadlines.com) has launched its online research service, providing solo practitioners and small firms with CompuLaw's (www.compulaw.com) rules-based court deadlines on a pay-per-use basis.

The rules database covers hundreds of jurisdictions nationwide, and deadlines can be e-mailed, printed or sent to the user's desktop calendar, such as Microsoft Outlook.

Dayton's LexisNexis U.S. (www.lexisnexis.com) has partnered with Deadlines on Demand to provide the service through lexisONE (www.lexisone.com), the company's small firm portal.

Reader Response No. 303.

PRACTICE TOOLS

AbacusLaw in 2005

ABACUS Data Systems Inc. (www.abacuslaw.com), of San Diego, says AbacusLaw Classic AbacusLaw 2005 features practice management tools like calendaring, contacts, conflict checking, and document handling. AbacusLaw Gold 2005 adds time and billing, trust accounting, accounts payable and more.

Reader Response No. 304.

PORTABLE OFFICE

DataWind PocketSurfer

DATAWIND Corp., (www.datawind.com) says its **PocketSurfer Web Viewer** provides a desktop-quality web

experience with no reformatting to fit a small screen, says the Montreal company.



The device measures 6 x 3 inches, and features a full qwerty keyboard. Users can view Java applets and Java-Scripts, as well as animated images, background colors and plug-ins.

Reader Response No. 305.

Addressee



EDD SHOWCASE

Advice for Small Firms

Don't be intimidated. You can handle e-discovery.

What's the most important advice you would give a small firm that is, for the first time, tackling a case requiring electronic evidence discovery?

We asked some consultants, edit board members, lawyers and vendors to give us advice. Here are their secrets!

*William Smith***
Abramson Smith Waldsmith
 San Francisco

1. *Can your client or the case afford to have an electronic trial consultant sitting with you during the entire trial?* One alternative may be to have the consultant plan the presentation, scan in the evidence and set up the courtroom — but have someone in your office scan the bar codes and operate the equipment during trial. The ultimate question is whether your client can afford the risk of equipment failure if there is no consultant present.

2. *How experienced is your consultant?* You need at least two back up systems. If it can fail, it will fail so you must reduce the risk of failure.

3. *Don't be in a hurry to scan your evidence!* Scanning evidence piecemeal is an invitation to disaster. You will forget what you scanned and this will create an organizational nightmare. Organize your evidence first, then scan it all in at once.

4. *Don't assume that your equipment plan will be acceptable.* Carefully design your set up for trial and get prior approval from the judge. Get your consultant and the equipment people into the courtroom the day before trial to set up everything and make sure it is working.

5. *There are ways to reduce costs.* The prevailing party can make reasonable claims for exhibit costs in some states. Because the electronic trial improves your chance of prevailing, consider putting some of these costs in your cost bill. If you are on a contingency fee, and hiring outside consultants, consider renting, not buying equipment.

The cost can be passed on to the client, you can keep current on the latest tech, and it reduces the hassle of storage.



*George Socha**
Socha Consulting
 St. Paul

Get help from a real person if you can, and from written materials if no live bodies are available. For referrals, contact the nearest association of litigation support vendors (such as www.malsm.org), and talk with colleagues in your firm and elsewhere. Or — dare I say it — discuss the problem with your client, who might even have some experience.

Go online. In addition to browsing through the *Law Technology News* website, (www.lawtechnologynews.com) or Law.com's *Legal Technology* site (www.law.com/tech), subscribe to litigation support listservs, such as Yahoo's <http://groups.yahoo.com/group/litsupport>. Visit litigation websites like Discovery Resources (www.discoveryresources.com); or Ken Wither's www.kenwithers.com (He's the senior judicial education attorney at the Federal Judicial Center.).

If you have some breathing room, consider attending an EDD conference or sign up for

one of the vendor-sponsored webinars. Finally, look at the vendors' websites.

*Neil Aresty**
LextraNet
 Boston

Evidence is like ice. It melts, changes form and disappears over time. Small firms need to know what they don't know and hire competent experts to help with the full spectrum of discovery issues — from issuing proper notice and preservation letters, to correctly harvesting electronic data as it was kept in the normal course of business, to deciding whether to review the materials in native form or convert to tiff or PDF image format.

Exercise diligence, check into the experts' experience, certifications and references!

Open books. A little technical understanding of file systems, operating systems and network architecture goes a long way — think of it as visiting the scene of the crime.

EDD will generate more front costs, but with the right advice early on, it can prove to be the most significant, efficient fact gathering.

*Connie Nichols**
Docusource Litigation Support Solutions
 New Orleans

Let discovery management software do the work. Many lawyers still impose traditional methods of paper discovery paradigms on EDD. But electronic files are not paper, and they are often best not treated as such. Whenever possible, redefine your processes to take advantage of the EDD features offered in your discovery management platform, to review, redact and produce discovery in its native format.

Petrification of e-files into static images represents a considerable expenditure of resources for a small firm. Once you understand your application's EDD features, much of that wasted time and expense can be avoided.

For instance, consider Summation Legal Technologies' new eDII syntax — it offers a simple yet powerful way to load EDD directly. Summation iBlaze 2.6 allows you to combine both techniques: old-fashioned scanned paper/OC'ed text (Class I) with EDD (Class II) for even more flexibility. To read more about Summation and EDD, see http://info.summation.com/sb/edd_news.htm.



Bruce Olson
Davis & Kuelthau
 Green Bay, Wisc.

Know all applicable law in your particular jurisdiction so you can properly advise your client of its obligations to discover, retain and produce all relevant information. If your jurisdiction follows *Zubulake V*, (see August 2004 LTN for latest update on this landmark litigation), you will find yourself subject to a newly-created duty, as counsel, to deal directly with your client's IT department and personnel to put in place a litigation hold that is made known to all relevant employees (and periodically reiterated). You can leave the technical issues of finding and producing electronic information to outside vendors, but only you can tell your client what its legal obligations are to avoid risk of spoliation and sanctions.

Michael Kraft*
Kraft, Kennedy & Lesser Inc.
 New York

Everyone, not just small firms, needs to understand EDD. Education is the key. With greater knowledge, techniques and tools can be evaluated more objectively. This area is a minefield. There is so much money involved in this area that it is attracting almost anyone who can say EDD. Vendors are coming out of the woodwork with claims and approaches that are not necessarily in the best interest of your firm or clients. So caution, education, training, process, planning and testing are the operative words.

Bruce Dornier*
 Solo
 Londonderry, N.H.

1. Determine what you are seeking.
2. Find a qualified expert — getting it into evidence starts at the time the computer/device is inspected.
3. Establish the budget so the client doesn't get an e-surprise!
4. Carefully craft your discovery requests so you get all data (computers, PDAs, tapes, backup media, offsite storage, repair, logs, etc.).
5. Consider working with an attorney or support firm who has been through the drill and gotten the e-smoking gun introduced into evidence in the past.

Craig Ball*
Law Offices of Craig D. Ball
 Montgomery, Texas

Success in EDD, as in marriage, lies in good communication. Use preservation letters to underscore what must be saved and how and why to save it. Spotlight the "conscious" in "conscious indifference" by educating your opponent. Meet and confer about EDD issues early, then memorialize your reasonable requests and your opponent's commitments or obstinacy. Depose their IT staff before framing requests. Trade the "any-and-all documents" broad axe for the scalpel of a request carefully tailored to what you need and can manage.

My credo is "force broad preservation but pursue narrow discovery." That's how to keep the pressure on. If they stonewall, request an e-discovery special master.

For the responding party, recognize that even optimum EDD preservation and collection efforts fail: Something's always going to fall through the cracks or be deleted. A savvy opponent can put you in the spoliation box. Be prepared to demonstrate good faith and diligence at every turn.

Document hold instructions, itemize systems explored and everything done: costs, hours, and GBs pursued. Build the case that you faithfully executed a sound approach. Next, seek cost-shifting orders to deny the requesting party a free ride. Finally, realize that some people just can't resist "tidying up" via the delete key. Anticipate human frailty and quietly secure forensically-sound images of key players' hard drives before the delete-o-thons begin.

In the end, the best advice is to work together. Like nuclear war, a costly and contentious e-discovery battle is only truly won by those who aren't forced to fight it in the first place.

Sara Goddard
Electronic Evidence Discovery Inc.
 Kirkland, Wash.

Find a services partner to assist you. Key requirements: make sure it is known for EDD, can handle the work, and will take time for you.

Look for a provider with knowledge and a good reputation, and get at least two referrals from colleagues. Ask vendors: 1) to send you their qualifications, 2) who they consider industry leaders, and 3) who is their competition.

Listen closely. Be assertive, don't accept the

standard skill, "Oh, we're great at everything."

Request references from folks who hired them to handle similar projects — whether it's a small processing job, or large. Do not settle for someone who simply talks a good game.

The largest and smallest vendors can both be guilty of not caring about you and your case. If you can't get a quick answer to your calls, they've prioritized a long-term or bigger client over you. Fast, intelligent responses, thoughtful follow-up, reliable estimates and materials are the sign of a good partner.

Jim Mittenthal
Baker Robbins & Co.
 New York

Small firms must quickly assimilate the reality that EDD is usurping paper as the preferred means of evidence collection and review. Sophisticated plaintiffs will use EDD to "level the playing field," and judges are rapidly being trained in such areas as the tradeoffs between "tiff" and "native" productions. Small firms must remain current with the rapidly evolving case law as to the duties to preserve, the shifting of costs, and the evolution of "safe harbor."

Attorneys must make an early assessment of two key issues:

1. Are forensic issues involved, or is this straightforward e-discovery? If there are allegations of data tampering or other malfeasance, the specialized procedures and tools for preservation, seizure, acquisition, and analysis of data at the forensic level must be brought to bear, particularly to preclude spoliation.

2. To what extent has an electronic document retention policy been formulated, implemented, and retained, prior to the onset of the litigation?

With those issues ascertained, your next steps as a requesting or requested party are:

- Issue or respond to a general data preservation instruction.
- Conduct technology fact finding or, if a requesting party, depose the technology represent on the other side.
- Assess the likely players, time frames, search taxonomies, and other issues that will drive the information to be specifically preserved and collected. Develop a cost estimate based on the expected scope and party expected to bear the burden (e.g., using such factors as accessible versus inaccessible e-mail), and a

See SECRETS Page 28

EDD SHOWCASE

SECRETS from Page 27

corresponding strategy.

- Create a detailed preservation request with specific instructions for IT personnel and affected users, or help negotiate a case management order for the other side to do same. Develop "going forward" approaches for personnel continuing to create potentially relevant data, such as live e-mail feeds or periodic re-collection schedules.

- Develop a collection plan and collect the custodian, server side, and archive data in a manner that preserves appropriate metadata and chain of custody, and balances the extent of materials collected with the cost and expected value. Vendor involvement may be helpful.

- Certify and release the litigation hold.
- Filter and de-duplicate the collected data. Vendor involvement is warranted here.
- Load into a litigation support system.
- Review for privilege and relevance and prepare for production.

*Judith Flournoy**
Loeb & Loeb
Los Angeles

Understand early on if data will be used later, i.e., is this discovery or just checking?

Chain of custody and metadata are critical, as is data integrity. Simply importing an Outlook PST file (mailbox) into your Exchange environment can prove highly problematic.

- *Data integrity:* You have no control over content, it may contain viruses or the amount of data may exceed the capacity of your system.

- *Chain of custody:* Once you import a PST into your Exchange environment, the chain of custody includes your firm and IT department.

- *Metadata:* If you simply import a PST or NSF (Notes mailbox) into your messaging system and allow your attorneys or paralegals to access that data and they open the message and or print the messages the metadata, the who, what and when of the message is modified.

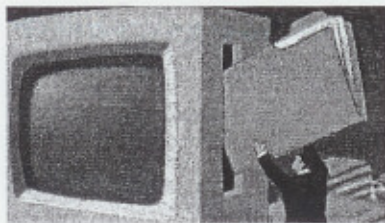
Seek assistance from a vendor if the search results will be used during the case as evidence.

*Albert Barsocchini**
Guidance Software
San Rafael, Calif.

Meet and confer with opposing counsel early on to keep cost down and specify the response format.

Jeff Flax
Federal Public Defender
Denver

1. Find out what information already exists



in an electronic form, and in what format. I have seen numerous cases where lawyers try to scan or enter information that was created and saved electronically in the first instance.

2. Define the requirements of what you want the EDD system to do. What and how will you search for information, how do you need it organized, are there special security issues, etc. Picking a product or vendor on price, reputation, or ease of use often leads to a significant disaster after it is too late. It is so much easier to build a bathroom in a house when it is being built than after.

3. Test the system or software with a few hundred documents early on. It is far easier to make corrections at the beginning than the end.

Chris Janak
Kelley Drye & Warren
New York

1. *Don't try to do it yourself.* There is no such thing as cost-effective DIY e-discovery. At a minimum, attempting to do so will cost twice as much in billable hours as it would have cost if you'd engaged a vendor in the first place. Worse, evidence may be inadvertently ignored, withheld or destroyed, risking malpractice.

2. *Don't bargain shop.* The copy shops that decided a few years ago to get into the scanning business are now in the e-discovery business. Owning a piece of software doesn't make you qualified to handle a complex or sensitive project any more than owning a snorkel makes you Jacques Cousteau. Evaluate qualifications and deliverables first, and price second.

3. *Keep your hand off the print button.* If there is any one place that attorneys need to be weaned off the instinct to review everything in the form of paper, it's in the EDD process. The instinct to turn a sortable, searchable fielded database of e-mail into mute paper must be thwarted — printing without capturing that data is like buying a \$300 pair of shoes, keeping the shoelaces, and throwing the shoes away. Litigation support technology is designed to make documents searchable — stripping electronic material of that characteristic is simply wasteful.

4. *Construct your requests carefully and negotiate mutually convenient mechanisms.*

E-discovery has created new horizons for litigants who want to dump impenetrably huge productions onto their adversaries. A CD containing native-format data may be equivalent to 75,000 printed pages. Requests should be sufficiently broad to encompass all the relevant material, while remaining sufficiently circumscribed and limited to avoid being buried by overproduction. One strategy that seems to work is for the parties to agree to date limitations, lists of particular custodians, and even search terms to avoid having to review punishing quantities of data.

Alex Lubarsky
Zantaz
San Francisco

Do not be intimidated! Resist the temptation to run and hide. A common misperception is that EDD is too complicated and expensive. This leads to dangerous "gentlemen's agreements" where counsel stipulate to exclude EDD. "I won't show you mine if you don't show me yours."

EDD can be very simple. A vendor can harvest, process and display the client's electronic data. Many review tools take even the most techno-adverse attorney just a few hours to begin operation. After all, how hard is it to formulate a very basic word or term search and then hit "next document and/or next page" and select a category/issue and possibly redact the image? In many ways, this is much easier and more streamlined than digging through a box with a highlighter, sticky notes and a Bates stamper.

Finally, the cost of EDD is some 35 times less expensive than its paper counterpart. Printing, manual labeling, copying (multiple times per document for the various litigants, productions, and legal teams) as well as storage and any image/OCR and expensive coding fees far outweigh the nominal cost of EDD, which can equate to a few cents per page, and usually includes metadata extraction, tiffing, and optimization for review in a litigation support application. ■■■■

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***Member, Small Firm Business Editorial Advisory Board.*

Wake Up Call

Only on the Web: Shay Pittman partners Mark Koehn and Ed Grass offer an update on *Zubulake* and other key case law that is shaping the EDD legal landscape. To read the article, visit www.lawtechnologynews.com or www.thecommonscold.com.