

White Paper

Early Case Assessment: Three Case Studies

Chris Smith, Senior Product Manager, Early Case Assessment

Early Case Assessment: Three Case Studies

Abstract



The cost and risk associated with eDiscovery are a concern to most litigation attorneys and their clients. Handled incorrectly, eDiscovery can generate spiraling technology and review costs, loss of negotiating position in discovery or settlement, or court sanctions that may result in loss of the case or serious financial penalties.

Efficient and effective delivery of eDiscovery projects is critical to litigation support teams, the general counsel and law firms they support, and above all, the clients whose serious legal matters are entrusted to them. Minimizing eDiscovery cost and risk requires planning, experience, appropriate use of technology, and a mechanism to estimate and manage a budget.

This white paper uses three case studies to illustrate how early case assessment methodologies and technology can help to mitigate the costs and risks associated with eDiscovery. At their core, the methodologies eliminate waste and accelerate conclusions by merging the legal teams' solid tactical decision-making with litigation support experience and appropriate use of cutting-edge technologies.¹

We start with an overview of the methodologies to define our terms. Then we explain how different aspects of the methodologies were applied to each case in the study.¹

We define content as the material required to be preserved, collected, searched, reviewed or produced. It may be any form of text or other media that requires evaluation of some kind for evidentiary value. Typically, most costs associated with eDiscovery are proportional to the volume of the content. Quickly finding relevant or important content is critical to managing risks. Keeping to a

¹ Chris Smith is a technologist who served as ECA Product Manager and Consultant for Early Case Assessment on the three projects described here and other ECA projects as well. chris@smithgrasso.com <http://www.linkedin.com/pub/chris-smith/0/399/77>. (978) 474-9970. Contributing to this paper are consultant Chuck Kellner and ECA Project Manager Kevin Reynolds.

minimum the volume of irrelevant or unnecessary content is critical to managing costs. In general, reduce irrelevant content every step of the way:

Identification, Preservation and Collection

1. During Identification, conduct interviews with potential custodians. Justify inclusion and exclusion of custodians based on found facts – only required technology is paper and pencil.
2. During Collection, select only the folders and directories that represent reasonable locations for relevant content. When possible, leave behind application and system directories. Use collection technologies that preserve content metadata.

Early Case Assessment

3. Design a search strategy that that will select only the relevant content and no more –
4. Apply technology to remove known system and application files (aka de-NIST), when excluding them during Collection was impossible.
5. Apply technology to de-duplicate the content – so reviewers only need to see each document once.
6. Apply the search strategy with appropriate technologies – a combination of keyword searching, metadata field searching, Boolean logic, regular expressions, analytical algorithms
7. Validate the search strategy through sampling of the non-hit content, verifying no false negatives.

Review and Production

8. Choose a Review tool that makes the reviewers efficient. This phase is recognized as the most expensive by far within eDiscovery. The Reviewers make important decisions on what content is responsive to the legal matter, and what content is privileged, must be kept private.
9. Produce –provide the reviewed and selected content to be shared with other litigants in the format required – native file formats, TIFF, PDF – and inventoried and Bates-numbered for management purposes.

The Success of any Project should be evaluated by:

- Accuracy of the Produced Documents – all relevant content included; all irrelevant content excluded
- Length of the Project from start to finish – and whether or not the schedule was met
- Cost of the Project – stayed on budget
- Cost of the Project – lower costs than previous solutions

These terms describe the spectrum of activities involved in an eDiscovery effort. Clients request assistance at a variety of starting points in the process. Sometimes we pick up where an internal team has left off; sometimes our client is a law firm that has inherited a case from another firm and it partially complete. Net: not all vendor engagements include all eDiscovery phases.

So now, here are three Case Studies that illustrate the benefits of the comprehensive approach to Early Case Assessment.

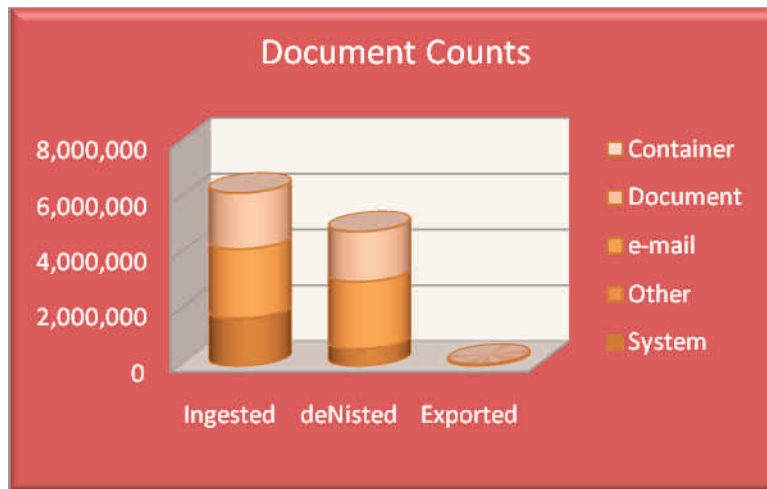
Case 1: Securities and Commercial Litigation

ECA Services Provided

- Custodian Interviews
- Strategy Consulting
- Collection
- Preservation
- ECA Processing & Analysis
- Review
- Production

A services company faced an SEC investigation and four years later, related civil litigation. In these proceedings it had preserved and collected two archives of electronically stored information totaling more than six terabytes. These consisted of images of desktop, laptop, email and file server computers, and volumes of Outlook email archives and loose file system data.

In less than two weeks, the vendor deNISTed this collection, de-duplicated the remaining 902 GB, and began providing counsel with assistance in data analysis and development of search criteria. In the following two weeks, counsel had selected approximately 27 GB for review in CaseLogistix. In the following four weeks, counsel completed its review and production. In the tenth week, counsel reported that it had settled the case.



* email includes messages and their attachments

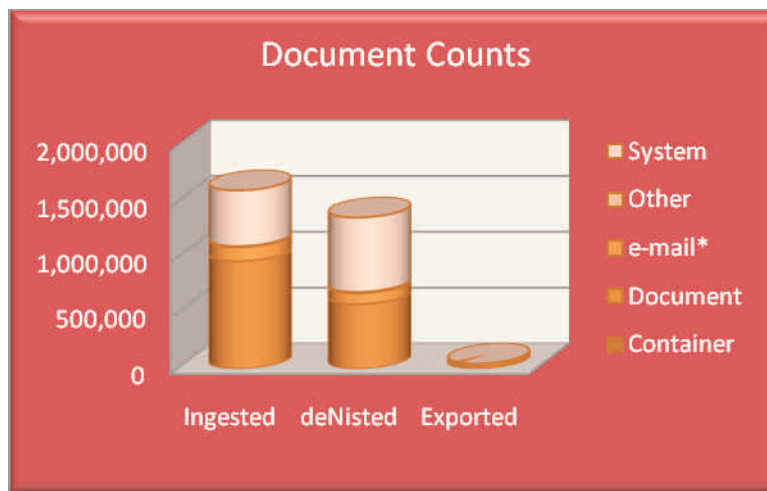
Case 2: Criminal Defense

ECA Services Provided

- Custodian Interviews
- Strategy Consulting
- Collection
- Preservation
- ECA Processing & Analysis
- Review
- Production

In a complex financial services criminal defense matter, the ECA service provider assisted counsel who came into the case as successor counsel. The ESI seized by the government consisted of more than 100 GB of Outlook/Exchange email, Groupwise email, and Windows- and Netware-based file system data from over two dozen custodian and shared sources. Few custodians were available for interview and the client had no direct knowledge of most of the sources of data. The legal team was challenged to find important documents and to develop a defense strategy.

The ECA service provider used search technology and early case assessment techniques to help counsel classify data according to allegations in the indictment. Within a month the legal team had selected a small subset of data to review in CaseLogistix that it could use to prepare witnesses effectively and to prepare for trial.



* email includes messages and their attachments

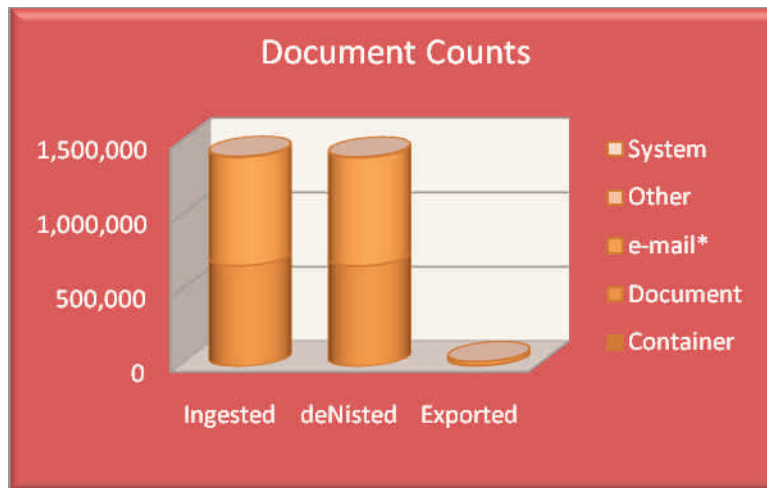
Case 3: Products Liability

ECA Services Provided

- ☑ Custodian Interviews
- ☑ Strategy Consulting
- ☑ Collection
- ☑ Preservation
- ☑ ECA Processing & Analysis
- ☑ Review
- ☑ Production

A consumer products company in products liability litigation was concerned that it owned three terabytes of ESI with no easy way to separate out the data and email on the named products from similar data in its extensive line of products. The e-Discovery service provider assisted with interviews of custodians and IT staff and the documentation for data mapping, inclusion and exclusion.

The vendor's staff then targeted a collection of 260 GB from more than two dozen custodians and shared file locations. After testing and applying search criteria, counsel selected about 30,000 emails and files for review and production in a first-pass review system, and completed its review and production in less than a month, using just five attorneys from outside counsel and the client's law department.



* email includes messages and their attachments

Appendix

Predicting costs augments controlling costs – and not just because clients don't like big invoices for legal services. Choosing between continued defense and settlement without prior knowledge of the potential costs of litigation is as risky as making that decision without visibility into the key facts of the matter at hand. A successful ECA project gives you a view of costs and content. How else can you win the proportionality argument without these facts?

Effective eDiscovery entails balancing costs and risks. A balanced strategy relies on accurate information couched in legal understanding; appropriate implementation of the strategy depends on proven methodologies and strong technologies, orchestrated by focused Project Management.

Ingested

File Types	File Count	File Size (GB)
System	1,700,379	102.26
Other	27,008	0.19
e-mail*	2,482,206	244.38
Document	2,012,134	553.27
Container	54	2.80
Grand Total	6,221,781	902.90

deNISTed

File Types	File Count	File Size (GB)
System	624,132	73.54
Other	6,316	0.02
e-mail*	2,410,259	237.52
Document	1,798,139	548.19
Container	49	2.80
Grand Total	4,838,895	862.07

Exported

File Types	File Count	File Size (GB)
System	0	0
Document	45,990	nnn
e-mail*	36,170	nnn
Other	0	0
Container	0	0
Grand Total	82,160	26.6

Ingested

File Types	File Count	File Size(GB)
Container	58	0.10
Document	964,635	23.44
e-mail*	126,905	21.54
Other	9,171	0.03
System	498,740	25.31
Grand Total	1,599,509	70.41

deNISTed

File Types	File Count	File Size(GB)
Container	36	0.10
Document	579,667	20.38
e-mail*	97,214	18.41
Other	12,828	0.01
System	666,282	11.05
Grand Total	1,356,027	49.94

Exported

File Types	File Count	File Size(GB)
Container	0	0
Document	23,818	nnn
e-mail*	23,251	nnn
Other	0	0
System	0	0
Grand Total	47,069	5.8

Ingested

File Types	File Count	File Size(GB)
Container	48	0.15
Document	677,958	187.30
e-mail*	728,911	39.03
Other	2,800	0.00
System	2,133	0.41
Grand Total	1,411,850	226.90

deNISTed

File Types	File Count	File Size(GB)
Container	48	0.15
Document	675,907	187.27
e-mail*	728,489	39.03
Other	1,184	0.00
System	2,104	0.38
Grand Total	1,407,732	226.82

Exported

File Types	File Count	File Size(GB)
Container	0	0
Document	9,623	nnn
e-mail*	22,127	nnn
Other	0	0
System	0	0
Grand Total	31,750	16.7