

Session 12: Receiving a Production

LBSC 708X/INFM 718X
Seminar on E-Discovery
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War Stories

1. “Data Dumps” circa 1980
2. U.S. v. Philip Morris (2002)
 - precedent for “open discovery”
and Fed R. Evi. 502

What do requestors want, and how do they obtain it?

- Revisiting Complaints and the discovery process
- Demanding preservation: sending hold letters and appearing at meet and confers
- Vehicles for delivery allowed under the Federal Rules of Civil Procedure
- Forms of questions
- Legit and illegit goals of discovery: costs, burden, settlement

Kinds of questions the requestor should ask of himself/herself

1. Do I understand what ESI types are involved in this case, and what I need to prove up factual allegations?
2. Is metadata going to be important? Do I need deleted ESI?
3. Will backup tapes be relevant?
4. Do I need the production to be in an electronic format? What kind of format?

Attempting to limit costs & burdens

- Narrowing the subject matter of the request to specific 'claims' or 'defenses' of the case.
- Limiting discovery to specific individuals or components of organizations
- Limiting search protocol to specific file types, custodians, timeframes.
- On site inspections vs. receiving data dumps
- Agreement with opposing side on what consists of inaccessible ESI; deduping, etc.

Designing a better “requestor” process

- Employing project management
- Use of experts
- Changing the forms of questions posed
- Cooperation re search protocols
- Using advanced search tools and technologies