ELECTRONIC DISCOVERY AND FILE MANAGEMENT PART I AKA LITIGATION PARALEGAL 101

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Brown Bag CLE – July 21, 2021



- How is all Discovery, Electronic Discovery*
- The ESI Memo
- Unitization
- Adobe Index
- File Naming Protocols
- The Digital Filing System
- Question and Answer
- Future topics

WHAT DOES DISCOVERY LOOK LIKE

- Criminal Law
- Police Reports;
- Expert Reports;
- Email Communications;
- Photo Arrays;

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AKA Documents

Civil Law

- Medical Records
- Accident Reports
- Expert Reports
- Bills
- AKA Documents

DOCUMENTS

WHAT DO DOCUMENTS LOOK LIKE...?





WHAT ELSE DOES DISCOVERY LOOK LIKE?

ELECTRONIC EVIDENCE

- Proprietary Software
- Recorded Interviews
- Cellebrite Reports
- Surveillance Video
- Data
- Objects and Items



example-msg-file.msg 29/11/2020 17:23

Outlook Item





DISCOVERY DUMPS

- Many documents in one file, documents are not unitized.
- Documents have no organization.
- Not bates numbered.
- Not identified in a cover letter.
- Documents are incomplete.
- Gives you more work than you expected.







- Produce your discovery with a cover letter indexing what is being disclosed.
- Unitized documents.
- File names that make sense.
- Don't disclose duplicate documents.
- Bates number simply.

WARNING

- Make sure you're following your attorney's instructions.
- The suggestions made hereto are a best-case scenario.
- Certain litigations call for other tactics to be used.
- Attorneys should decide strategy.

COVER LETTERS

Cover letters should include the following:

Case

Date

Index of materials disclosed with bates numbers

Signed

	U.S. Department of Justice United States Attorney District of New Mexico
<u>VIA EMAIL TRANSMISSION</u> AFPD Aric G. Elsenheimer AFPD Amanda R. Lavin Federal Public Defender 111 Lomas Blvd, NW, Suite 501 Albuquerque, NM 87102	P.O. Bax 607 Phone: (30) 346-7274 Albuguergue, NM 87103 Fax: (305) 346-7296 June 15, 2021
Re: United States v. Dear Counsel:	anced matter we attach discovery bates, numbered 2717, 2721

Please note that the file may personally identifiable information such as dates of birth, social security numbers, and other sensitive information. <u>It is your responsibility to ensure that all necessary redaction is performed prior to use of the discovery in distribution or in motion or trial exhibits</u>. Further, this office relies upon your good faith as an officer of the court not to disclose said information to parties who might seek to exploit it.

Pursuant to Fed. R. Crim. P. 16 and the Court's standing discovery order, the government requests that the defendant provide reciprocal discovery by permitting the government to inspect and copy or photograph books, papers, documents, photographs, tangible objects, reports of physical or mental examination and/or scientific tests, or copies of portions thereof, which are within the possession, custody or control of the defendant and which the defendant intends to introduce as evidence at the trial. Further, I request that defendant permit the government to inspect and copy any summary of the testimony that the defendant intends to use under 702, 703, or 705 of the Federal Rules of Evidence, and any other discovery to which the government is entitled.

Additionally, pursuant to Fed. R. Crim. P. 12.1, the government requests that defendant provide notice of any intended alibi defense, and pursuant to rules 12.2(a) and (b) also any notice of any mental disease or defect. The government further requests compliance with any *Touly* regulations as necessary. Please advise me of any discovery that cannot be readily reproduced so that we can arrange a time for me to review this discovery.

Please do not hesitate to contact me at (505) 224-1419 if you have any questions regarding this discovery.

Very truly yours,

FRED J. FEDERICI Acting United States Attorney **Novaline D. Wilson/ada** NOVALINE D. WILSON Assistant United States Attorney

UNITIZATION

Unitization is the process by which electronic documents is separated by document...

One file = one document

UNITIZATION

• The ESI Memo states the following:

- PDF. Production in multi-page, searchable PDF format consists of the following one element:
 - (1) Paper documents scanned to a PDF file with text generated by OCR included in the same file. This produces one file per document. Documents should be unitized. Each page of the PDF should be stamped with a unique Bates number.

ONE FILE PER DOCUMENT

c. Document unitization. Document unitization is the process of determining where a document begins (its first page) and ends (its last page), with the goal of accurately describing what was a "unit" as it was received by the party or was kept in the ordinary course of business by the document's custodian. A "unit" includes attachments, for example, an email with an attached spreadsheet. Physical unitization utilizes actual objects such as staples, paper clips and folders to determine pages that belong together as documents. Logical unitization is the process of human review of each individual page in an image collection using logical cues to determine pages that belong together as documents. Such cues can be consecutive page numbering, report titles, similar headers and footers, and other logical cues.

HOW TO UNITIZE A LARGE DISCOVERY DUMP



 Bookmark and Export

DON'T FORGET TO OCR



Recognition Recognition

FILE NAMING / DISCOVERY

- Remain Uniform
 - For in house documents, my method is:
 - BNBeg-BNEnd DOCTYPE AUTHOR SUBJECT DATE
 - 0001-0004 FBI 302 ACEE INFORMANT INTERVIEW 7-19-2019
 - For productions to opposing counsel, ask your attorney:
 - BNBeg-BNEnd Disclosure | 7-19-2019

WAIT, WHAT IS THE ESI MEMO?



"Recommendations for Electronically Stored Information (ESI) Discovery Production in Federal Criminal Cases"

Department of Justice (DOJ) and Administrative Office of the U.S. Courts (AO) Joint Working Group on Electronic Technology in the Criminal Justice System (JETWG)

February 2012

JUDGES ARE FED UP WITH DEALING WITH PARTIES BRINGING THE E-DISCOVERY DRAMA

- DUKE LAW JUDGES SURVEY 2019 - Judges prefer not to deal with ediscovery issues;

Attorneys and their staff should have a competence in E-discovery;

Judges want to be involved when parties cannot agree;

ESI MEMO TAKEAWAYS

- Attorneys and their staff should understand electronic discovery;
- Discovery should be unitized, OCR'd, and bates numbered;
- Native files should remain in native format, retain metadata;
- Parties have an obligation to produce discovery in a means that prevents unnecessary work by other parties;
- Disputes should be resolved informally, meet early and come to agreements;
- Don't forget to redact.

DIGITAL DISCOVERY/ESI PRODUCTION CHECKLIST

ESI Discovery Production Checklist

□ Is this a case where the volume or nature of ESI significantly increases the case's complexity?
Does this case involve classified information?
Does this case involve trade secrets, or national security or homeland security information?
Do the parties have appropriate technical advisors to assist?
Have the parties met and conferred about ESI issues?
□ Have the parties addressed the format of ESI being produced? Categories may include:
Investigative reports and materials
Witness statements
Tangible objects
Third party ESI digital devices (computers, phones, etc.)
Photos, video and audio recordings
Third party records
Title III wire tap information
Court records
Tests and examinations
Experts
Immunity and plea agreements
Discovery materials with special production considerations
Related matters
Discovery materials available for inspection but not produced digitally
Other information

DIGITAL DISCOVERY/ESI PRODUCTION CHECKLIST

Li outer information

Have the parties addressed ESI issues involving:

□ Table of contents?

Production of paper records as either paper or ESI?

Proprietary or legacy data?

Attorney-client, work product, or other privilege issues?

Sensitive confidential, personal, grand jury, classified, tax return, trade secret, or similar information?

□ Whether email transmission is inappropriate for any categories of ESI discovery?

Incarcerated defendant's access to discovery materials?

ESI discovery volume for receiving party's planning purposes?

Parties' software or hardware limitations?

□ Production of ESI from 3rd party digital devices?

Forensic images of ESI digital devices?

□ Metadata in 3rd party ESI?

Redactions?

Reasonable schedule for producing party?

Reasonable schedule for receiving party to give notice of issues?

□ Appropriate security measures during transmission of ESI discovery, e.g., encryption?

□ Adequate security measures to protect sensitive ESI against unauthorized access or disclosure?

□ Need for protective orders, clawback agreements, or similar orders or agreements?

Collaboration on sharing costs or tasks?

Need for receiving party's access to original ESI?

Preserving a record of discovery produced?

Have the parties memorialized their agreements and disagreements?

Do the parties have a system for resolving disputes informally?

□ Is there a need for a designated discovery coordinator for multiple defendants?

Do the parties have a plan for managing/returning ESI at the conclusion of the case?

ADOBE INDEX

- Don't combine all your PDF's into a single document and scan for words page by page.
- Means to search over all OCR'd PDF's in just moments.
- Show example.

lacktrian Search \times Arrange Windows Looking For: Broken in the index named Smith - US Discovery Index.pdx Results: 14 document(s) with 39 instance(s) 图-New Search Results: 🐳 00. QAM LOM Binder.pdf > 🗸 🏘 38. Practices for Processing a Submission and Evidence Breakdown 4.pdf broken down at this point. 3.2.3 Receipt of Evidence from an External Laboratory by further broken down to faci litate examinations. 3.10.5.1 The person describing the 1 Not Broken Down If a request for examination is received, but canceled by the being broken down, the assigned person managing the case will prepare a Laborato, y the not broken down. 3.13 Resubmitted Evidence 3.13.1 If an item is resubmitted under the 🗸 🙀 Y:\L...\216-256 - PD Int Douglas Smith_05-05-2018.pdf 15 broken into four times, and then we started putting up, 19 um, motionby got broken into the first night -- it was, 19 like, about a week broken into 24 your -- 2s MR. SMITH: Uh-uh. Russin Reporting, ゞ 📆 40. Practices for Preparing, Reviewing, and Issuing Laboratory Reports and Retaining Records in Forensic Advanta > 🙀 Interview_of_Doug_Smith-Transcript > Sort by: Relevance Ranking ~ Collapse file paths **Refine Search Results** Show Fewer Options Find a word in the current document



WHAT DOES PAPERLIGHT LOOK LIKE

Basic file structure that can be expanded to include all possible file folders.

Integrity of the files can be dealt with by training or permissions.

Standardization of file names should be written into a policy.

An easy enough system so people know where to look.

Do a trial run, pick a date and implement the system.

- 01 Attorney and Admin
- 02 US Discovery
- 03 Defense Gathered Materials
- 04 Pleadings
- 05 Correspondence
- 06 Experts
- 07 Transcripts
- 08 Research
- 09 Exhibits

COMPLICATED CASES AND DEATH PENALTY





CONSIDERATIONS FOR DIGITAL FILE SYSTEMS AND FILE NAMING

- Create a document location, foldering protocol and file naming protocol;
- Where would your attorney look? Where would this document go in a physical file?
- Can you Search and find the document you want?
- Keep the file name short ish.
- Identify draft and final.

FILE NAMING PROTOCOLS / PLEADINGS AND CORRESPONDENCE

• Pleadings

8064 - US MIL to Prohibit Discussion of Sentencing.pdf	7/14/2020 7:31 AM	Adobe Acrobat D	233 KB
👃 065 - MIL For pretrial determination of Indian Land Status.pdf	7/24/2020 10:03 AM	Adobe Acrobat D	1,212 KB
066 - USA Motion to Exclude Self-Serving Statements.pdf	7/21/2020 2:29 PM	Adobe Acrobat D	17,200 KB
B 067 - US Notice of Intent to Introduce 404(b) evidence.pdf	7/30/2020 7:22 AM	Adobe Acrobat D	160 KB
🔒 068 - US Motion in Limine to Exlcude Self Defense Evidence.pdf	10/14/2020 10:00 AM	Adobe Acrobat D	144 KB
🔒 069 - US Response to Def Motion for Production of Grand Jury.pdf	10/14/2020 10:01 AM	Adobe Acrobat D	403 KB
🔒 070 - Response to Objection to Expert Notice.pdf	6/9/2020 4:37 PM	Adobe Acrobat D	221 KB
🔒 071 - US Response to Def Omnibus MIL.pdf	7/13/2020 6:35 PM	Adobe Acrobat D	652 KB
🔒 072 - US Response to Defendant's Motion to Suppress.pdf	10/14/2020 10:06 AM	Adobe Acrobat D	2,398 KB
💫 073 - Motion to Demonstrative Exhibit.pdf	8/3/2020 2:00 PM	Adobe Acrobat D	627 KB
074 - US MIL to Permit Evidence Against Failure to Claim Self Defense.p	10/14/2020 10:10 AM	Adobe Acrobat D	139 KB
💫 075 - US MIL to Prohibit Argument About Quality of Investigation.pdf	10/14/2020 10:12 AM	Adobe Acrobat D	139 KB
🔒 077 - US Motion to Introduice Statements.pdf	7/14/2020 1:21 PM	Adobe Acrobat D	236 KB
🔊 078 - Order for Continuance.pdf	5/29/2020 7:38 AM	Adobe Acrobat D	97 KB
🔒 080 - Def Unopposed Response to Extend Deadline to File Responses.pdf	7/30/2020 7:50 AM	Adobe Acrobat D	102 KB
💫 082 - Def Reply to US Resp to Def Mtn to Dismiss un 12b.pdf	7/30/2020 7:47 AM	Adobe Acrobat D	160 KB
👃 083 - Def Reply to US Resp to Def Mtn for Grand Jury Transcripts.pdf	7/30/2020 7:46 AM	Adobe Acrobat D	198 KB
👃 084 - Def Reply to US Resp to Def Mtn to Exclude T Chavez.pdf	7/30/2020 7:44 AM	Adobe Acrobat D	203 KB
👃 085 - Def Rep to US Resp to Def Omnibus MIL.pdf	7/30/2020 7:44 AM	Adobe Acrobat D	159 KB
086 - Def Resp US Mtn to Permit Evidence of Failure to Claim Defense 7	7/30/2020 7:42 AM	Adobe Acrobat D	153 KB
👃 087 - Def Resp US MIL Exclude Statements to Law Enforcement.pdf	7/30/2020 7:39 AM	Adobe Acrobat D	201 KB
👃 088 - Def Resp US Mtn to Prohibit Self-Defense.pdf	7/30/2020 7:38 AM	Adobe Acrobat D	165 KB
089 - Def Response to US Mtn from Challenging Quality of Investigatio	7/30/2020 7:37 AM	Adobe Acrobat D	165 KB

• Correspondence



COOL FILE NAMING PROGRAMS

🖷 Better File R	Rename 6		-		×
		Current name	Change to		^
Category:	Sequence Numbers	IMG_1000.JPG	Greek Holiday 002.JPG		1
Action	Produce sequence number list	IMG_1001.JPG	Greek Holiday 003.JPG		
700011		IMG_1002.JPG	Greek Holiday 004.JPG		
Profix	Greek Holiday	IMG_1003.JPG	Greek Holiday 005.JPG		
FIGIA.		IMG_1004.JPG	Greek Holiday 006.JPG		
Suffix:		IMG_1005.JPG	Greek Holiday 007.JPG		
		IMG_1006.JPG	Greek Holiday 008.JPG		
Start with:	1 Step value: 1	IMG_1007.JPG	Greek Holiday 009.JPG		
		IMG_1008.JPG	Greek Holiday 010.JPG		
Padding:	3 digits minimum	IMG_1009.JPG	Greek Holiday 011.JPG		
	(Padding refers to the minimum number of digits in a number	IMG_1010.JPG	Greek Holiday 012.JPG		
	If the number has fewer digits leading zeros will be inserted,	IMG_1011.JPG	Greek Holiday 013.JPG		
	e.g. 1, 2 becomes 001, 002)	IMG_1012.JPG	Greek Holiday 014.JPG		
Order	Durant and an event and the form (A to 7)	IMG_1013.JPG	Greek Holiday 015.JPG		
Order.	by name and sequence number (from A to 2)	IMG_1014.JPG	Greek Holiday 016.JPG		
	Sort each subfolder separately	IMG_1015.JPG	Greek Holiday 017.JPG		
Change:	File name only	IMG_1016.JPG	Greek Holiday 018.JPG		
		IMG_1017.JPG	Greek Holiday 019.JPG		
		IMG 1018.JPG	Greek Holiday 020.JPG		~
Process: 🔽	Files Folders Subfolders and their contents	🗇 🔒 📴 🕒 🗱			
Show Mu	Iti-Step Interface Create Droplet		Perform Rer	names	

QUESTIONS OR SUGGESTIONS FOR UPCOMING CLE

