



Sex, Lies, IT Security, Electronic Discovery and the Impact on Human Resources: Tales from the Dark Side

Roundtable:

Tess Blair, Morgan, Lewis & Bockius LLP

Kevin Esposito, Pfizer

Gerry Boccuti, Wyeth

David Berg, PricewaterhouseCoopers



An eDiscovery Primer

The problem . . .

- Scope:
 - “Electronically Stored Information”
- Volume
 - Billions of emails sent daily in U.S.
- Cost:
 - An industry predicted to reach \$2.8 billion by 2007
- Litigation Risk
 - Casual mode of communication
 - Spoliation
- Evolving discovery rules and case law



The eDiscovery problem:

- eDiscovery, *by its very nature*, is easier to get wrong than it is to get right
- Review of this volume of data is beyond human capability and growing exponentially
- Cost and disruption to normal business operations can be enormous

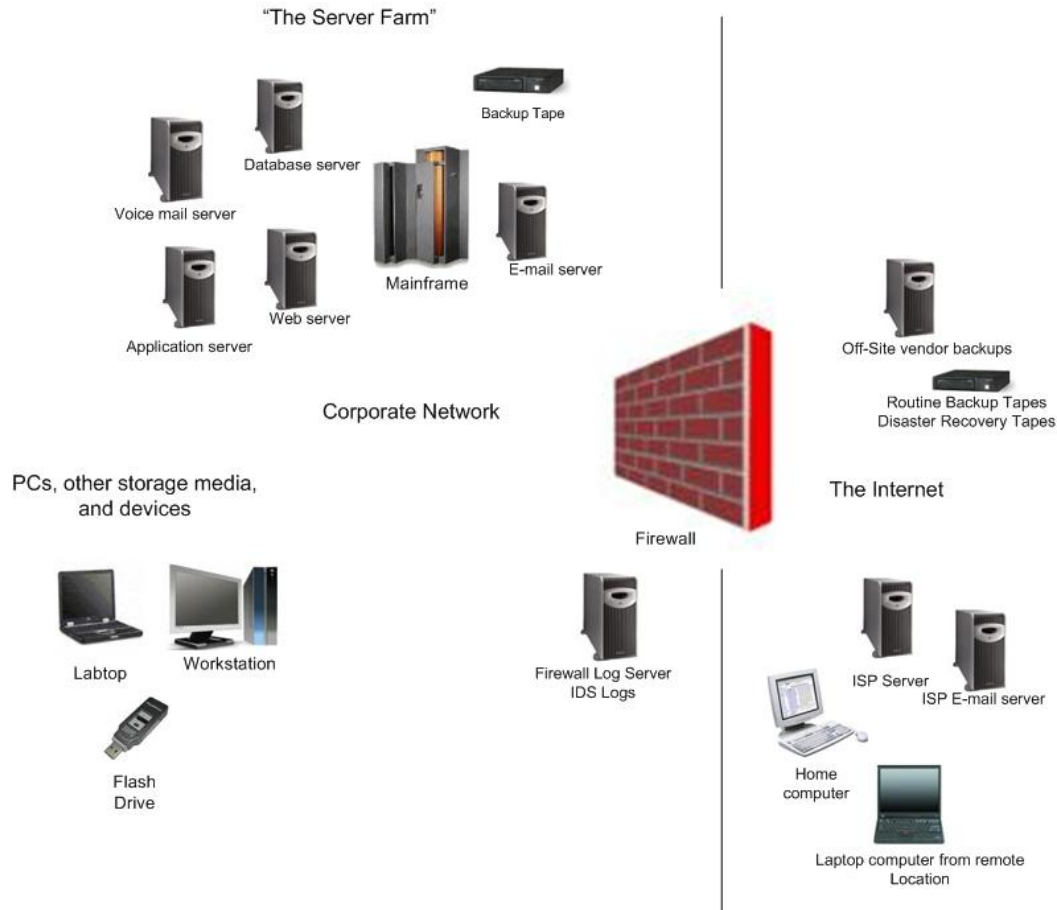


eDiscovery can involve production of electronic files and data compilations of all sorts, including:

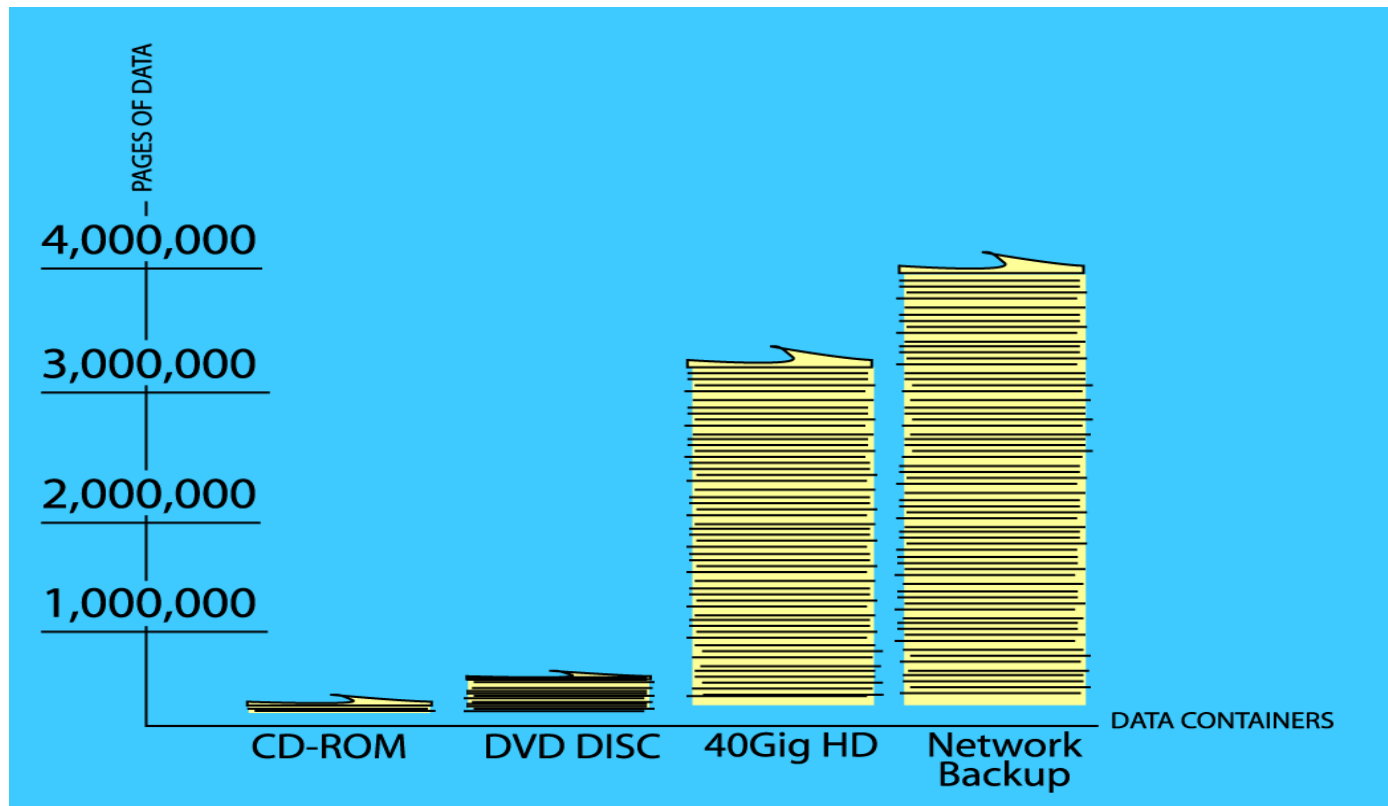
- email and attachments
- text files, such as Word, Excel, Powerpoint, Access
- transmissions and data stored on blackberries and PDAs
- backup tapes
- proprietary applications and databases
- internet cache files, cookies, favorites
- instant and text messages
- voicemail
- videotape
- data stored on cellphones



Ubiquity of Electronically Stored Information (“ESI”)



eDiscovery Data Measurements



Recent Cases

- The *Zubulake* saga:
 - failure to preserve backup tapes
 - adverse inference instruction
 - \$29M verdict (\$20M in punitives)
- Morgan Stanley
 - failure to preserve and produce from backup tapes
 - burden of proof shifted
 - counsel sanctioned and fired
 - \$1.4 BILLION verdict





Roundtable Discussion



Corporate Readiness for eDiscovery



eDiscovery in Labor & Employment Litigation



HR's Role in the eDiscovery Process



Internal Investigations



Stupid Human Tricks



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