

CGOC 2006 SUMMIT

From Retention to Preservation: **Soup to Nuts**

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Corporate Participation in the E-Discovery Process

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Biography

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Jim spent over 25 years in the Engineering and Construction industry before founding a Project Management consulting group in 1991 where he became active as a testifying expert.

In 2001 he was recruited to Halliburton as an in-house expert, where his research into electronic discovery lead to his current position. He is an advocate for greater participation by corporate clients in e-discovery and is an often-requested speaker on the subject.

Corporate Participation in E-Discovery

- Principal Reasons for Participation
- Level of Participation/Control
- Risks and Benefits
- Legal and Technical Issues
- Necessary Steps
- Sample Work Process Flowcharts

Why should Corporations participate in E-Discovery?

- Corporations own all the risk of litigation and pay all the costs
- It's just not a paper world anymore
 - Data volumes changed everything
- Corporations know their E-data better
- E-Discovery mgmt is inconsistent among law firms
- Law firms risks & incentives differ from corps
 - Law firms have a more conservative methodology towards discovery
 - A de-facto disincentive exists for data reduction

What level of participation is appropriate?

- Factors to consider
 - Type of industry & type & qty of litigation [compliance-driven, class action, commercial litigation, etc.]
 - Type & volume of E-data related to litigation
 - Resource requirements
 - Appetite for risk
 - Anticipated cost benefit

Risks and Benefits

- Increased [?] Risks
 - Spoliation
 - Law Firm resistance
- Benefits
 - Cost Reduction [data volume mgmt is the key]
 - \$ E-D technology costs
 - \$\$ Legal review cost
 - Consistency across litigation spectrum
 - No need for ED mgmt consideration in law firm selection
 - Improved response to discovery demand
 - Avoid those weekend blitzkrieg productions

Legal and Technical Issues

- Legal
 - Shifts risk from O/S counsel to Corp for inadequacies/problems with E Discovery matters
 - O/S counsel's obligation to assure Client compliance with discovery rules must still be addressed
 - Greater participation by corp. ED staff means potentially greater exposure to depositions, testimony, etc.
 - Obligations re: Preservation, absent O/S counsel, revert to corp. client

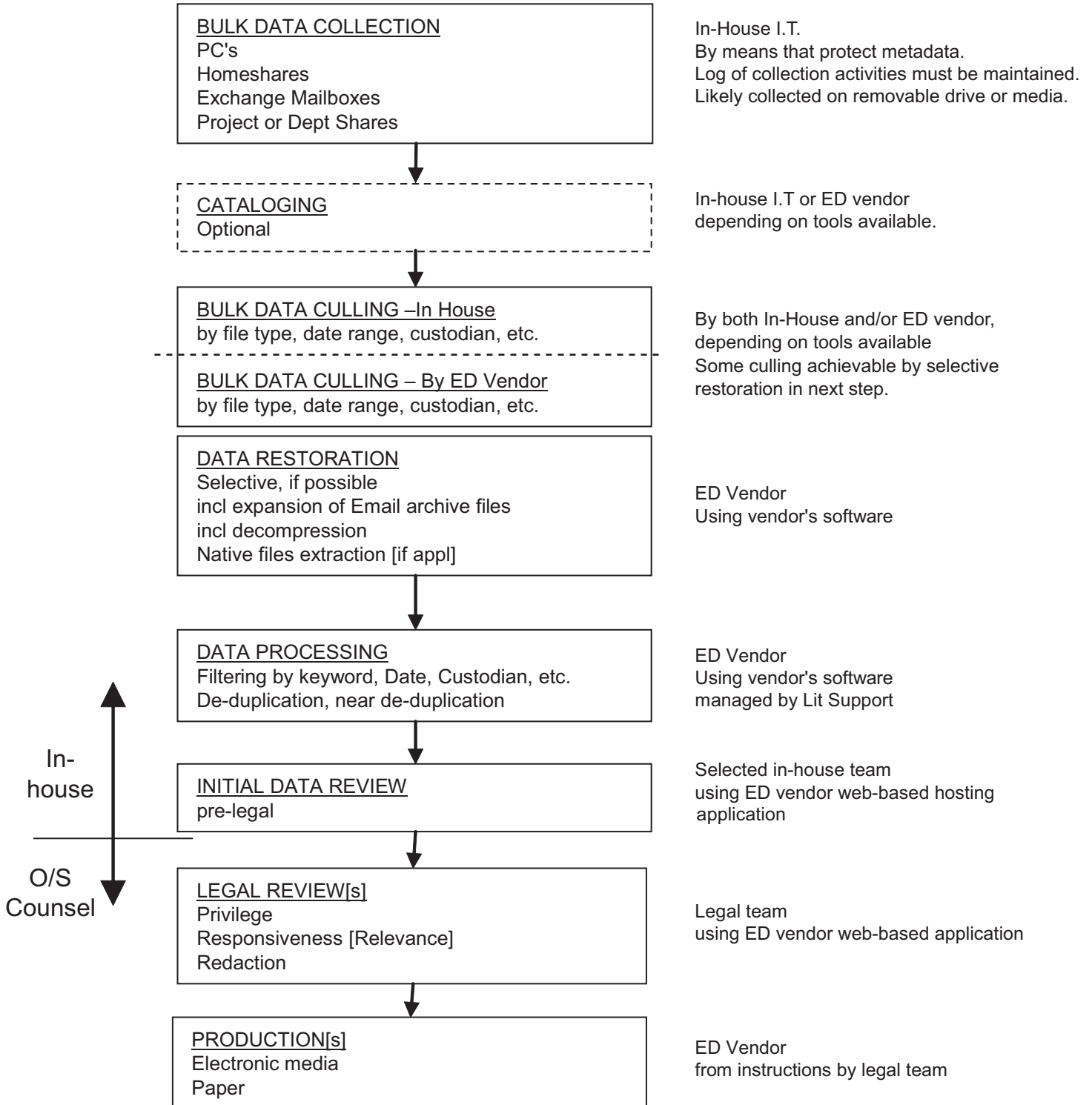
Legal and Technical Issues [cont]

- **Technical**
 - Burden of technical processes of E-D shifted to corp.
 - Corp. ED staff must be technically knowledgeable and current with law
 - Technical problems cannot be blamed on ED vendor
 - Credibility of self-performed discovery could be challenged

Necessary Steps for Participation

- Learn your E-Data and I.T systems
- Learn the law on ED
- Learn the technologies available
- Learn the E-D process
- Determine what level of participation you want
- Solicit a pricing structure that makes sense
- Develop a protocol & formalize it
- Implement it
- Audit it

Sample E-discovery Work Process Flow



Example E-Discovery Work Process – Detail w/ pricing points

