

eDiscovery Tech Tips for CJA Panel Attorneys

Southern District of Ohio

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Written Materials (Presentation Outline)

I. Description of session:

Cases continue to grow, in size and complexity. Discovery previously provided in a banker box is now delivered digitally via the cloud or external hard drives and are encrypted. This presentation will give a primer on eDiscovery in federal criminal cases in 2024. It will cover strategies relevant to reviewing PDFs, cellphone forensic reports, and audio-video recordings. It will provide tips and tricks for using tools such as Adobe Acrobat, dtSearch, and Cellebrite Reader to search and review the discovery in your case.

II. Resource materials

- A. 01-Broderick Presentation Outline
- B. 02-ABA Criminal Justice Magazine Article on Criminal ESI
- C. 03-ILAS v. Linear Review Report-Kershaw-Anne
- D. 04-NLST Encrypted Discovery File Guidance
- E. 05-NLST Announcement for Box.com for CJA Panel
- F. 06-Three Types of PDFs-NLST Blog Spot
- G. 07-NLST Announcement for dtSearch for CJA Panel
- H. 08-Excel as an Organizational Litigation Tool-Aoki-Broderick
- I. 09-NLST Materials for Cellebrite Reader-CJA Panel Attorney Representative Conference
- J. 10-Cellebrite Reader Request Language
- K. 11-Working with Email in Discovery_Processing Options and Review Workflows_nlsblog
- L. 12-NLST Announcement for Casepoint for CJA Panel (online e-discovery review database)
- M. 13-NLST Announcement for Services of Coordinating Discovery Attorneys (CDAs)
- N. 14-AO Announcement of Resources for Managing Large Volumes of Discovery in Federal CJA Cases
- O. 15-NLST Memo on Rule 16.1
- P. 16-NLST Announcement for Trial Director 360 for CJA Panel (courtroom presentation software)
- Q. 17-NLST Announcement for Slate Technology services for the organization of wiretap interceptions, jail calls, and social media productions.

III. Overview of Presentation

A. Trends

1. DOJ eLitigation AUSAs and litigation support personnel.
2. Cloud now the default for accessing software and storing files.
3. Digital data grows unabated.
4. Attorneys need to know how to search digital information.

B. Getting access: Encryption

1. USAfx – download on top level folder, not just by individual files.
2. Trellix (McAfee).
 - a) Create decrypted copies of the files instead of leaving it encrypted in the Trellix (McAfee) system.
3. Ask the government how many files were produced so you can compare what that with the number of files you were able to extract from the production to ensure you received everything they intended to produce.
4. Box.com.
5. Keypad encrypted external hard drives (one to consider – Apricorn Aegis Padlock external hard drives).

C. Tools

1. Adobe Acrobat Pro
2. dtSearch
3. Cellebrite Reader
4. Microsoft Excel
5. CaseMap

D. Strategies

1. Form of Production and Meet and Confer Process
 - a) Form of Production – General Categories
 - (1) Native
 - (2) Near Native
 - (3) Imaged
 - (4) Paper
2. Considerations
 - a) Ask what is the original form in which they received the materials.
 - b) When dealing with scanned paper look for computer generated versions of the files.
 - c) When dealing with scanned paper consider asking for multi-page searchable PDFs with document breaks (unitization).
3. Common production formats
 - a) Multi-page searchable PDFs with document breaks (a.k.a.

unitized).

b) Single page TIFFs, extracted text, and load files that tie together the images, text, and metadata (as available).

c) Native Files

4. Meet and Confer Process.

a) Ask them how they are reviewing the discovery.

b) Include someone who understands the technology in the process.

c) Common issues to discuss.

(1) Form of production

(2) Proprietary formats

(3) Volume estimates

(4) Discovery index

(5) In-custody defendants

d) Reasonably usable; industry standard

E. Big Case support options

1. Casepoint

2. Coordinating Discovery Attorneys (CDAs)

3. Slate Technology

4. NLST

IV. Resources

A. National Litigation Support Team

1. <https://fd.org/litigation-support>

B. National Litigation Support Team Blog

1. <https://nlsblog.org/>

C. National Coordinating Discovery Attorneys

1. <https://fd.org/litigation-support/coordinating-discovery-attorneys>

D. Recommendations for Electronically Stored Information Discovery Production in Federal Criminal Cases (ESI Protocol)

1. <https://www.fd.org/sites/default/files/Litigation%20Support/final-esi-protocol.pdf>

E. Federal Judicial Center (FJC) Criminal e-Discovery: A Pocket Guide for Judges

1. <https://fd.org/litigation-support/Joint-Electronic-Technology-Working-Group/pocket-guide>

**Federal Indigent Defense:
How to Stop Worrying and Love the Digital Age
By Sean Broderick and Russell M. Aoki**

Today, technology impacts every attorney defending an indigent client against a federal criminal prosecution. Public defenders and private court-appointed counsel increasingly need practical strategies to manage and review valuable evidence hidden like needles within the haystacks of discovery. No longer just a consideration for complex multiple-defendant cases, technology strategies must be considered and effectively employed to address government discovery productions even in “simple” single-defendant prosecutions.

Technology’s impact is most felt in the realm of electronic discovery, referred to as “e-discovery” or “ESI” (electronically stored information). Lawyers in large firms with experienced e-discovery staff know how to develop and implement discovery management plans. They understand the importance of usable formats, software tools, and processes specifically designed for the digital age. But the challenges of ESI may be especially daunting for private court-appointed counsel, who are predominantly solo or small-firm lawyers with little exposure to complex e-discovery. Because nearly 90 percent of all defendants in federal criminal cases have court-appointed counsel (either an attorney from the local federal public or community defender office, or a private attorney who accepts Criminal Justice Act (CJA) appointments), it’s vital for the integrity of the judicial system that counsel for indigent defendants adapt to the digital era. Broadly stated, the key to adequately addressing e-discovery challenges is understanding the technology and how to strategically use software and resources to efficiently review and manage e-discovery.

The days of paper investigative reports are long gone. Discovery productions now include e-discovery extracted from client computers and mobile devices. Agents look at social media sites like Facebook, Instagram, and Twitter to capture possible incriminating materials. Videos are common and include months of pole-camera recordings, business security videos, and even concealed camera footage. Add in government-created evidence using technology such as cell phone wiretaps, body wires, and GPS tracking devices, and it becomes clear technology is more than the form of discovery: it’s the tool to gather evidence, the means to manage evidence, and frequently the evidence itself.

Although tempting, hitting the print button will not solve discovery management problems. Hard copies will not address the mixed-media discovery—the volume is too substantial to print, and critical information will not appear on the paper. Counsel for indigent defendants will lose out on the speed, efficiency, and quality of information that e-discovery can provide when done thoughtfully and produced in reasonably usable formats.

There are several critical issues indigent defense counsel must address to adequately manage and review e-discovery:

- Large volumes of information even in “small cases”;
- A variety of sources (from a multitude of digital devices and locations);
- Proprietary formats;
- Hidden information (metadata and embedded data);
- Differing formats for production; and
- Software and hardware limitations.

Regardless of the size of the firm and the availability of support staff, the challenges of technology and the management of e-discovery can be a time-consuming and distressing distraction, and are compounded by the ticking speedy-trial clock, impatient judges wanting to move the case along, and anxious in-custody clients seeking to review the materials that will be used to prosecute them. To meet these litigation demands and effectively represent their clients, defense counsel must leverage technology support tools for end-to-end discovery management. The solution to e-discovery’s challenges starts with making a plan then implementing it.

Make a Plan

Because public defenders and private court-appointed counsel are rarely appointed pre-indictment, they typically are not aware of specifics of the discovery such as volume and type. It can be particularly challenging to learn how to manage various forms of e-discovery while learning the case. The first step to making a plan is to meet and confer with the government about the nature and volume of e-discovery and the mechanics of producing it, specifically addressing the form of discovery production.

Historically, one of the challenges for all federal criminal practitioners has been the lack of established rules and procedures regarding how to manage e-discovery in criminal cases. Unlike the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure are largely silent on how to conduct e-discovery and do not address the form of production. In the absence of rules, an excellent road map for managing post-indictment e-discovery is the *Recommendations for Electronically Stored Information (ESI) Discovery Production in Federal Criminal Cases* ([http:// www.fd.org/docs/litigation-support/final-esi-protocol.pdf](http://www.fd.org/docs/litigation-support/final-esi-protocol.pdf)), also known as the ESI Protocol. This document was produced by the Joint Electronic Technology Working Group (JETWG) with representatives of the Administrative Office of the US Courts’ (AOUSC’s) Office of Defender Services (now called the Defender Services Office, or DSO), the Department of Justice (DOJ), federal public and community defender organizations, private attorneys who accept CJA appointments, and liaisons from the United States judiciary and other AOUSC offices.

Published in 2012 with the support and encouragement of then Deputy Attorney General James Cole on behalf of DOJ, the ESI Protocol outlines 10 principles for managing post-indictment e-discovery. The ESI Protocol is familiar to federal prosecutors, as DOJ trains them in the use of the ESI Protocol in cases involving complex e-discovery, as well as to many federal public defenders, community defenders, and CJA panel attorneys. The document sets forth a collaborative approach to ESI discovery involving mutual and interdependent responsibilities. The goal is to benefit all parties by making ESI discovery more efficient, secure, and less costly.

Considering the guidance of the ESI Protocol and each lawyer's ethical responsibilities, every criminal defense lawyer's analysis of how to strategize e-discovery management should begin with four fundamental principles.

Learn technology. Many criminal practitioners should increase their understanding of e-discovery issues and litigation technology. Without sufficient knowledge in the constantly changing world of technology, counsel may miss potentially beneficial evidence by making critical mistakes early in the case, such as inadvertently choosing production formats they cannot use or that will not help find the evidence they need. The wrong format could cause valuable metadata in electronic records to be missed because counsel was entrenched in printing their discovery. Ethics opinions and the interpretations of the Rules of Professional Conduct are evolving, requiring a lawyer to have an adequate understanding of e-discovery and technology needs. For example, the State Bar of California issued a formal ethics opinion on this subject in the summer of 2015. (See State Bar of Cal. Standing Comm. on Prof'l Responsibility & Conduct, Formal Op. 2015-193 (2015).) Though focused on civil litigation, some of the points explicitly mentioned are directly relevant to counsel for indigent clients in federal criminal cases: the ability to initially assess e-discovery needs and issues; identifying custodians of potentially relevant ESI; engaging in competent and meaningful meet-and-confer with opposing counsel concerning an e-discovery plan; and performing data searches. This development follows the 2012 American Bar Association amendment to its Model Rule 1.1, stating that lawyers must "keep abreast of changes in the law and its practice, *including the benefits and risks associated with relevant technology.*" (Model Rules of Prof'l Conduct R. 1.1 cmt. 8 (emphasis added).) Lawyers unfamiliar with e-discovery are encouraged to associate or consult with others who have the expertise. Ultimately, however, lawyers remain responsible for e-discovery decisions whether made by staff or third-party vendors. By staying current with technology trends, lawyers can confidently oversee nonlawyer technical assistance.

With state bars emphasizing the ethical issues relating to technology competence, CLE sessions on e-discovery management have become prevalent. Local and national seminars offer educational opportunities from hour-long sessions to multiple-day in-person trainings. Most lawyers know of litigation support specialists, paralegals with experience working e-discovery, or technology consultants who can also give advice.

Develop an early discovery plan based on volume and format. The temptation to dive into a haystack of discovery can be powerful but often proves to be an inefficient strategy for review. Sketching out even a basic plan to address discovery helps to stay focused on the greater and immediate objective of discovery management. A discovery plan typically starts with assessing the volume of materials and the format in which ESI is gathered for production before addressing case-specific issues.

E-discovery volume poses a serious challenge due to the variety of devices on which ESI can be created and stored, the ease of various forms of telecommunication (such as texting and social media), and the declining cost of storage. ESI can come from many sources, such as mobile phones, smartphones, tablets, laptops, desktops, computer network servers, external ESI storage devices (e.g., flash drives or external hard drives), cloud storage, GPS tracking

devices, and social media. The growth of ESI in criminal cases is expected to continue, significantly complicating organization and review of evidence. The presence of e-discovery is not limited to computer and white-collar fraud cases. What once were “straightforward” gun or drug cases may now have smartphones and computers as evidence, with gigabytes or even terabytes of data on the device. Without technological assistance, attorneys cannot review so much data. The greater the volume, the greater the need to identify the necessary technology tools for management and review. The format in which ESI is gathered affects how the data can be used. E-mail messages collected as PDF or text-only files can be searched for particular words or combinations of words. It can be cumbersome to review, sort, and filter the information. But if in the process of collecting the e-mail messages, the metadata is also gathered and produced, then thousands or millions of messages can not only be searched for particular words, but they can also be sorted and filtered in a number of combinations, including by date, custodian, and author or addressee, and software can be utilized to visually demonstrate who communicated with whom and how frequently.

To benefit from the information available in e-discovery, attorneys must know what format the original data was in, what formatting options are available, and how those options affect their potential review of the data. Attorneys who do not understand the various formats should consult with a litigation support expert before receiving or processing their e-discovery.

Meet and confer with the government. The ESI Protocol promotes early conferences with the government to ensure discovery is produced in a usable format. An early meet-and-confer is a valuable opportunity, because voluminous e-discovery cases present difficult challenges for both prosecutors and defense counsel. Missteps at the outset are costly to unwind or correct, and waste time and money. To get the parties to address e-discovery issues early, the ESI Protocol recommends three steps: (1) at the outset, the parties should meet and confer about the nature, volume, and mechanics of producing e-discovery; (2) at the meet-and-confer, the parties should address what is being produced, a table of contents of the discovery, the forms of production, discovery volume, software and hardware limitations, inspection of seized hardware, and a reasonable schedule for producing and reviewing e-discovery; and (3) the producing party should transmit its e-discovery in sufficient time to permit reasonable management and review, and the receiving party should be proactive about testing the accessibility of the ESI when it is received.

Become familiar with litigation support tools. There are numerous software tools available for managing all of the stages of electronic discovery: preserving, collecting, and harvesting data; processing and/or converting ESI; searching and retrieving information; reviewing ESI; and presenting evidence. It can be daunting to determine what tools to use, especially since many can be used for similar tasks. Often, companies name the tasks differently in their computer program, or the program completes the task in a somewhat different way. At this point no single software tool does everything needed for e-discovery. Some tools specialize in processing raw ESI into formats that another tool can then use, while other tools specialize in a discrete function such as document review, strategic analysis, case organization, production of discovery, or trial presentation in the courtroom.

For the solo and small-firm lawyers, litigation software is necessary to work with ESI in its

many formats. Most document review programs allow parties to view hundreds of different file types. DOJ and most civil law firms have managed their own discovery materials with software programs and technical personnel for years. However, many private court-appointed attorneys do not have litigation support software that can view and organize TIFF or native-file productions. (TIFF is a common file format for storing images; “native” refers to a file produced in the format in which it was originally created.) Similarly, most do not have tools to take advantage of a “load file” (a cross-reference file used to import images or data into litigation support databases), extracted metadata, or files in native or near-native ESI format. DOJ may produce discovery in a reasonably usable format, but court-appointed counsel may not utilize the most robust litigation software available to take advantage of the form of production. An important strategy is for computer-challenged defense counsel to seek reasonably useable e-discovery. US attorney’s offices can provide e-discovery on disks that contain software for viewing, searching, and tagging documents. For more sophisticated defense counsel, DOJ typically creates load files or otherwise configures its e-discovery productions in industry standard formats. There are instances where typical practices do not work well, such as cases that involve predominantly surveillance materials. Those instances are excellent topics for a meet-and-confer.

Implement Your Plan

Initial review of data. Upon receipt, the discovery should be cataloged by the date received and the contents produced. A second working copy should be made with the original put away for safekeeping. A review of the composition of the data will confirm the volume and format of the discovery to ensure the production is complete and no files became corrupt during the collection or copying process.

The discovery should also be reviewed to determine if documents have been provided in a searchable format, or if they will need to be made searchable prior to loading into a discovery management tool. PDFs in the production should be reviewed to determine if they comprise many documents combined into one PDF, and if so, whether they should be separated into single-document PDFs. The types of documents must also be determined to identify the best method for organizing the data. Defense counsel may want investigative reports to be gathered and prioritized for immediate production and review to address pretrial motions and possible detention issues. Forensic images of computers should be handled separately as they take longer to produce and could take weeks from the time of receipt to analyze. Analysis of forensic computer data requires specialized tools to view while in their forensic state or to unlock for application of keyword searches. Which keywords to use may depend on information revealed in documents such as the investigative reports.

Selection of discovery management tools. Discovery management tools need not be expensive or complicated. The most effective tools are the ones counsel will use. Common business software programs provide features that will allow discovery to be cataloged, searched, and sorted, and are already available in every law firm, big or small. Programs such as Word and Excel all include the ability to create charts and tables, add and search comments, and hyperlink discovery items. Excel includes the ability to filter large quantities of materials to smaller collections. Even loading all the documents into a folder and using Windows Explorer or Apple’s Finder for simple keyword searches is an easy and effective method to

locate materials in a small collection of searchable documents. More sophisticated desktop programs provide cost-effective review. Programs like Adobe Acrobat Pro that are designed to create, edit, convert, encrypt, and publish PDF files are excellent tools for managing electronically scanned paper, and provide basic organization, search, and annotation features. Besides providing an easy-to-use PDF-based desktop tool, the program can add Bates numbers or separate documents by page or by bookmarks. CaseMap is another desktop software application specifically designed for case management and analysis of legal and factual issues. It connects case facts, legal issues, key players, and key documents. Defense counsel can store important case information of many file types and generate relational spreadsheets for ready access and analysis. Through searching and flexible filtering, CaseMap enables end users to see how any person, fact, document, or issue relates to other elements in the case. Besides being a database and useful for discovery analysis, it can also create trial notebooks and prepare reports focused on any combination of issues, witnesses, or cross-examination material. Stand-alone sophisticated desktop search engines such as dtSearch can apply sophisticated multiword searches with results ranked based on relevance to the inquiry. Counsel merely assembles the discovery into a folder and points the search engine to index the materials for search capability. The program provides great functionality in searching both electronic documents and paper documents subsequently scanned and converted to a text-searchable format, especially since it can search and retrieve information in many file types.

The next step up in both sophistication and cost are web-hosted document review platforms. They have powerful databases with sophisticated search capabilities and enormous data capacity. Most are linked to multiple servers and can provide complex keyword search strings against millions of documents. The cost can be expensive, but considering the attorney time that would otherwise be spent conducting linear page-by-page review, a web-hosted document review platform can reduce the cost of searching and reviewing huge volumes of discovery. An outside service frees counsel from ensuring the program works properly, is kept secure, and is properly maintained with program updates.

Typically, web-hosted document review platforms entail two major costs. The first is processing, which is the loading of the discovery. Processing includes removing computer and system files that contain no probative evidence and indexing the material to be searchable. The second cost is hosting. Hosting fees are typically charged per month and based on how many gigabytes of data are being hosted. Often associated with monthly hosting are user fees where each end user is assessed a monthly charge. Web-hosted document review platforms are well suited for multiple-defendant prosecutions, involving huge amounts of discovery and defense teams that include support staff, investigators, and experts. These platforms use a database and tools to capture, organize, analyze, and review e-discovery. They enable multiple individuals to access discovery and other case materials through a secure online portal, much like accessing bank account information online. The e-discovery can be searched, retrieved, viewed, and/or printed. Each individual can work collaboratively from his or her respective offices or any location that allows Internet access and privately code or comment on documents for only fellow team members. For multiple-defendant cases, the cost per defense team makes the expense worthwhile.

Selection of outside vendors. Many cases require technical assistance from vendors. The

services could vary from converting proprietary audio and video files into formats for PC and Apple Mac computers, making huge volumes of discovery searchable, or enlisting a web-based database company to process and host discovery.

The most effective way to obtain court funding is to comparison shop for services and prices. One service provider may claim potential costs of \$10,000 for a particular service, yet another vendor may do the same work for under \$1,000. The cost difference often depends on the skill and experience of the vendor. By obtaining three or four proposals, the court develops greater confidence that the service is cost-effective and a competitive price was obtained. Counsel gains a better sense of the options available, and is more likely to choose tools and services that fit specific needs for the case.

To assist in being able to compare proposals and to get better pricing in complex cases, consider using requests for proposal (RFPs). By developing an RFP, you will better understand the scope of work and increase the likelihood you will get what you want from the system and vendor selected. By providing a customized RFP to prospective vendors, you will be able to compare bids among vendors so that you are not comparing apples to oranges, as many employ different pricing models, charging differently for various services (or not telling you about hidden costs with their proposed solution). In the best-case scenario, the RFP identifies the features and functions counsel believes will help them efficiently and effectively review, search, organize, and analyze the voluminous discovery in a case, while at the same time reducing overall costs. For federal court-appointed lawyers, the National Litigation Support Team (NLST), which is part of the DSO, is available to help attorneys for indigent defendants struggling with extensive e-discovery and can assist in this process.

When planning, technology and outside assistance can come together. For illustrations of how thoughtful planning by counsel, use of appropriate technology, and outside assistance can help overcome e-discovery challenges and provide a solution, consider the following two example cases where counsel for indigent clients (one state, one federal) were able to assist their clients and turn e-discovery from a challenge into an asset.

Wiretap cases can be frustrating and time-consuming for defense counsel. Often they will receive unorganized collections of tens of thousands of captured telephone conversations and a similar amount of linesheets, which are documents memorializing each recorded call. In one recent multidefendant wiretap, the discovery included more than 20,000 recorded calls. Though the discovery was initially produced by the government in proprietary formats, after a meet-and-confer the government was willing to provide the discovery in industry standard formats (computer-generated CSV and PDF files). Defense counsel worked with an outside technology company to create sortable spreadsheets that used an automated process to extract linesheet information (the target number, date, time, duration, and number dialed), break up or “unitize” the multiple-document PDFs that were produced into PDFs each containing only a single recording session, then associate the information to the audio. Though the volume of wiretaps was over 20,000 calls, the work was completed in a few weeks. Using the sort and filter functions of the spreadsheet, counsel could then quickly locate pertinent calls by the target phone number, specific days, particular number dialed, or any combination of these criteria, and display the relevant linesheets hyperlinked to the associated audio. Such a review,

performed manually by counsel and/or paralegals, would have taken hundreds of hours and cost many times over the expense of the vendor's automated program.

In another recent case, defense counsel was presented with a hard drive of discovery that included not only the investigative reports, but also forensically preserved file folders. These folders had to be unlocked to process the data. Counsel forwarded the hard drive to a small technology company and requested a file-type report describing the various files found on the device: e-mail, PDFs, picture files, system files, etc. Besides the file-type report, counsel could obtain a file-path report that showed not only the file types, but also the folder path revealing where the materials were on the hard drive. From this report it was determined that most of the 386 gigabytes of data—primarily program and system files, or iTunes music files—were irrelevant. The file-path report revealed there were only three gigabytes of documents. The technology company then created a sortable, hyperlinked spreadsheet with three worksheets. The first contained documents, the second the audiovisual files, and the third the remaining discovery data. The cost was substantially less than other solutions that a large technology company may have charged for processing the discovery, and much, much less (and more effective) than if counsel had resorted to hitting “print” and attempting to review the materials with eyes on paper.

The solutions described above were case-dependent, and in many instances the solutions required for complex e-discovery cases will take more time and/or resources than described above. But they illustrate the possibilities that exist when counsel representing indigent clients obtain e-discovery in reasonably usable format, leverage the appropriate technology, and strategically use outside resources to efficiently manage e-discovery and better defend their clients.

Defendant's access to e-Discovery when incarcerated

Providing in-custody defendants meaningful access to e-discovery is a significant issue for criminal defense practitioners. As counsel for indigent defendants know, it is important to facilitate access for their defendants as they often can help locate critical evidence much more quickly than defense team members. Importantly, defendant access to e-discovery allows them to assist in their own defense, facilitates attorney-defendant communication, and improves overall advocacy on the defendant's behalf. In 2013, DOJ reported that in recent years 76 percent of federal court defendants were in pretrial custody. With much of the discovery and potential evidence starting in digital form, developing ways for defendants to review e-discovery in digital form is a priority for all involved in the criminal justice system.

There is no easy answer on how to make the many formats of ESI accessible in a facility. Few in-custody defendants are housed in Bureau of Prisons (BOP) pretrial detention facilities. The BOP operates only seven dedicated detention centers. This means most defendants are in one of the approximately 1,800 state, county, or private facilities nationwide—each with varying discovery review policies. Some do not allow discovery in even paper form. Some facilities lack funding to provide discovery computers, lack staff to maintain equipment and monitor its use, or disallow computers due to their concerns regarding security for their particular facility. Yet others are considering tablet devices, but those devices cannot handle the many file types

common with e-discovery.

Even if equipment were available to review more file types, many facilities do not allow executable files (files that load software applications) to be added to inmate-accessible computers. This causes problems when defendants attempt to view many of the common surveillance audio and video files provided in discovery that can only be viewed by using proprietary viewers. Another variation on this problem is a defendant's inability to view files that require an IPRO runtime viewer. DOJ commonly produces TIFF images (a frequent file format for large e-discovery cases) in this manner. However, the IPRO viewer's self-executing feature means it is not allowed in many detention facilities. The files must be converted into a format the facility will allow, which is a time-consuming task defense counsel rarely know how to perform.

In addition, some of the discovery provided consists of unsearchable PDF documents. This causes significant delay in reviewing the discovery, because even the best PDF viewers cannot search PDF documents if the materials are not first made searchable. Defendants are left linearly reviewing discovery page by page. When facilities do allow computers, tablets, or other devices, they often require the attorney to be present with the defendant while he or she reviews the e-discovery. With large amounts of e-discovery, this can become quite time-consuming and costly for the CJA panel system.

JETWG is studying the risks and benefits of allowing inmates access to computers for e-discovery review. It hopes to produce practical recommendations soon, but with the wide variance in facilities and their respective policies, solutions will be difficult to identify. One thing is clear: there is no one-size-fits-all solution to this dilemma. In the interim, counsel working on behalf of indigent defendants should look to work with their local court, prosecution, defenders, CJA panel attorneys or representatives, and detention facility to find a workable solution.

Conclusion

Managing e-discovery is a critical component of today's criminal defense work and appears at first blush to be a daunting subject for most court-appointed counsel. However, taking the time to learn the technology will add a new skill to representing indigent defendants. If counsel is not sure what to do, they should ask those with experience. It may start with their local federal public or community defender office, CJA panel rep, or support staff experienced with managing e-discovery. The ability to manage e-discovery is an expectation of clients, the courts, and even the state bar associations.

ITERATIVE LEGAL ANALYSIS & SAMPLING (“ILAS”) vs. LINEAR DOCUMENT REVIEW

– A COMPARATIVE CASE STUDY

Can lawyers conducting iterative data analysis and sampling identify relevant documents more efficiently than legal teams undertaking linear review?

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The Hypothesis

Can an experienced lawyer who understands the case, the client objectives and strategy, and possessing technical analysis skills or working collaboratively with someone who has them (an “Iterative Legal Analysis and Sampling” (ILAS) approach), find the relevant documents in litigation or an investigation, faster, less expensively and as effectively as, a team of contract review lawyers working at much lower hourly rates conducting ‘linear’¹ document review?

The Answer

Yes. The study described below (the Study) determined that, using the same software, an ILAS approach can find all of the relevant documents found by a linear review and also many documents missed by a linear review, in a fraction of the time and for a fraction of the cost. In other words, a subject matter expert armed with iterative analysis and sampling tools can perform better than a team of linear reviewers.

The Need for This Study

Traditionally, all the documents relevant to a dispute or investigation were contained in paper based files, filing cabinets or in boxes in a warehouse. Lawyers were required to read all these documents because there was no other way to understand the facts of the case, the information at hand and what might need to be produced to satisfy discovery obligations.

With the emergence of photocopiers, fax machines and word processors, more and more paper was produced. So, more and more paper files were collected, as were more and more boxes in the warehouse. Hundreds of boxes instead of a handful. The only way to find what was responsive was to arrange for trained human eyes to read it all.

¹ Linear review is the process of having human eyes on all documents within the review universe.

Clients complained about the cost of experienced litigators eyeballing every document and this was the impetus for the emergence of a new document review industry. The answer to the document volume and cost problem was to push the review process to less expensive lawyers interested in temporary project work. At the time, this was really the only viable option. There was simply no other way to understand the documents, explore the facts, and hone in on the potential evidence.

Then came electronic documents and email and e-discovery volumes increased dramatically. The contract linear review lawyers manually reviewed these electronic documents as well, just as they had done for paper documents, but the volumes were exponentially larger, leading to enormous costs for clients and enormous profits for e-discovery vendors and law firms.

Many of us working on reducing the costs of e-discovery have long questioned the continued use of linear review in light of increasingly powerful electronic search capabilities for iterative sampling and analysis. The theory that we can find what we need to find if we understand what we have and how to use the technical tools at our disposal, is now finally, definitively, proven to be true. In light of these findings, linear document review can no longer be considered best practices for most cases. In some instances, a blended process applying ILAS before engaging a linear review may be most appropriate and would also reduce document review costs.

The Framework for the Study

The Study compared two methodologies to locate relevant documents. A traditional linear document review was performed by two document reviewers, with oversight by a quality control reviewer. The results of the linear review were then compared with an “Iterative Legal Analysis and Sampling” (ILAS) approach.

The ILAS approach involved a senior legal technology manager and a senior attorney familiar with the matter, using software with integrated review and analysis functionality, iteratively applying a range of strategic and creative search techniques to

find responsive documents. The ILAS approach did not involve a 'document review' in the traditional sense. Instead it involves a more skillful application of human expertise using metadata filters (date ranges, file types, authors and recipients etc.), correspondence traffic, domain and name analysis tools, alongside keywords that were refined iteratively by viewing the search terms in context within the documents that contained them during a circular, feedback-loop refinement process.

The discrepancies between the two review processes were then reviewed by the counter process and "agree" and "disagree" determinations were counted and resolved.

The Documents

The documents used for the study came from a real case filed against a software systems company by a former client that was settled shortly after data was collected. Collections had been made from 12 custodians and totaled 9.95 gigabytes containing 113,454 documents after the removal of system files. The data set was de-duplicated across custodians, with all source information retained, and then keyword culled to a final review set of 9764 documents.

The document types in the final review set included email, Microsoft Office documents, PDFs, and other assorted documents. Certain document types were unique to the systems in place at the client, such as reports from databases.

The Teams

The linear review team consisted of two contract attorneys contributed by Kelly Services, a traditional document review staffing agency. The Kelly Services team was hand selected for their high quality work on prior matters and for their extensive document review experience. Their work was overseen and quality checked by an experienced, senior document review attorney who also managed the project. The ILAS team included a senior Legal Technology Manager who is an expert in the use and

application of document review analytics and a senior attorney from [Reasonable Discovery, LLC](#).

The Review Scope

The scope of the review was framed by the claims made in the underlying case and the document requests served in the case. Both teams were provided with copies of the pleadings and document requests. The review teams were instructed to mark as relevant any documents that pertained to modifications, alterations, improvements or repairs to any of the defendant software developer's goods or services. Documents were also deemed relevant if they were related to issues or problems with, or defects existing in, any of the defendant's goods or services.

The Review Platform

Both the linear and ILAS teams coded all 9764 documents using [EDT](#), a document processing and hosting repository that provides both a traditional document review interface and analysis functionality to facilitate the ILAS approach.

The linear team used the traditional document interface to make document by document decisions as to relevance. The ILAS team was given access to the document analysis functionality within the platform. Each team coded the documents independently of the other team and EDT's security settings were used to suppress from view the coding decisions made by the other team.

The Linear Review

The first pass team divided the documents randomly into three folders – one for each first level reviewer so that each reviewer had a similarly-sized cross section of all the documents in the set. The first pass reviewers started on their documents after a training on the subject matter and reading through the pleadings and document requests. Document families were used to give context to document meaning but each document was coded individually. The only coding in this instance was a binary

relevance coding for responsive or not responsive to the issues outlined above. No coding was applied for privilege, confidentiality, or issue tags.²

As the review started, the reviewers were encouraged to talk amongst themselves regarding the meaning of documents. After they reviewed their first 200 documents, they rotated computers and checked through another reviewer's documents to ensure both familiarity with the documents and conformity of the decisions. Any feedback was openly shared and further discussion was encouraged among the group. After concluding the check of each other's documents, the reviewers switched back to their original computers and continued to review their original folder of documents.

Throughout the review, the reviewers elevated questions on the interpretation of documents to the senior attorney project manager, who would make a final decision on the coding of the documents. This decision was communicated to all of the reviewers to apply going forward. A note was made in a decision log regarding the responsiveness determination for purposes of quality control across the entire review set. A quality assessment of the review was performed after the linear review was complete. Leveraging the decisions recorded in the decision log and the experience of the senior attorney, targeted searches were used to correct any coding discrepancies.

The first pass review concluded in 4 days of review. The quality assessment review finished in a few days following the first pass review.

The Iterative Legal Analysis and Sampling (ILAS) Approach

The ILAS team leveraged EDT's integrated document analysis functionality and review features to allow for iterative metadata analysis and in-depth, real time searching, together with random document content sampling. Specifically, the analytics

² Another study is in the works to measure the effectiveness of ILAS for identifying privileged and confidential documents versus traditional methods.

reviewer focused on keyword searches using stemming and Boolean searches. These terms were continually refined via real time analysis of documents containing keyword hits. Email to, from, and between specific custodians were searched and email addresses associated with the individuals involved on each side of the underlying suit, and emails between them, were identified and deemed relevant. Emails threads were clustered and similar documents were programmatically identified and presented. Other metadata searches included searching for specific email subjects using email address and domain normalization techniques. In other words, the ILAS approach involved a true and robust technology assisted review, emphasizing human expertise and employing a strategic process that is very different from the process referred to as “predictive coding.”

Document sets returned by the searches and filters were sampled at a rate of 10 - 20% in order to ensure that the analysis returned expected results. In instances where false hits were returned, keyword searches were revised and expanded iteratively to further refine results. This winnowing process leveraged the functionality of the application’s multiple analysis tools, allowing the ILAS team to quickly find the correct documents for further analysis. The analytics reviewer was able to confirm his analysis with a lawyer who had extensive experience with the documents through prior work on the underlying case.

The ILAS team took a total of 10 person-hours to complete and that time period included certain technology associated times as documents were re-indexed. In addition to the 10 person-hours required for the review, there were 4 hours of attorney supervision performed as oversight.

Coding Disparities and Adjudication

The linear review coded 4894 documents as responsive and 4870 as non-responsive. The ILAS reviewer coded 6304 documents responsive, 3460 non-responsive.

Initial Pass

	Linear Team	ILAS Team
Documents coded Responsive	4894	6304
Documents coded Non Responsive	4870	3460
Time Spent	98 hours	14 hours

In addition, 1712 documents were coded responsive by the ILAS review team that were coded non-responsive by the linear review team, while 303 documents were coded responsive by the linear team that were coded non-responsive by ILAS team. These disagreements in coding were adjudicated by having each team review the other team's different coding decision. Here are the results:³

	Gold Standard	Linear Team	ILAS Team
Relevant	5448	4847	6225
Not Relevant	4190	4791	3413
Excluded as Borderline	126	126	126
Total Documents	9764	9764	9764
True Positives (correctly assessed as relevant)		4824	5215
True Negatives (correctly assessed as not relevant)		4167	3181
False Positives (incorrectly assessed as relevant)		23	1010
False Negatives (Incorrectly assessed as not relevant)		624	232
Excluded as Borderline		126	126
Number Relevant Documents Missed		624	232
Percentage Relevant Documents Missed		11.45%	4.26%
Relevant Documents found by ILAS team & missed by Linear Team			392
After ILAS Team's re-review of Linear Team decisions - final numbers 2			
	Gold Standard	Linear Team	Analytics Team
Relevant	5475	4847	6217
Not Relevant	4155	4783	3413
Excluded as Borderline	134	134	134

³ The final coding decisions and results were analyzed by Nathaniel Byington, an expert in computational linguistics, for purposes of comparing the effectiveness of each review.

Total Documents	9764	9764	9764
True Positives (correctly assessed as relevant)		4824	5242
True Negatives (correctly assessed as not relevant)		4132	3181
False Positives (incorrectly assessed as relevant)		23	974
False Negatives (Incorrectly assessed as not relevant)		651	233
Number Relevant Documents Missed		651	233
Percentage Relevant Documents Missed		11.95%	4.28%
Relevant Documents found by ILAS Team & Missed by Linear Team			418

Conclusions

The ILAS team was able to find more relevant documents than the linear review team (a higher “Recall”), was less likely to miss a responsive document, and was more likely to include a borderline document, i.e. the ILAS approach was overly conservative in its assessment of responsiveness in line with the preference of most litigators. Where in doubt, include it. That approach is generally preferred in litigation to the alternative that leads to a high number of false negatives – relevant documents missed. The linear review took 98 hours whereas the ILAS review took 14 hours.

With these numbers, paying the linear review team members \$50 per hour, the cost of the review was \$4,900.00.⁴ Paying the ILAS team \$200 per hour, the cost would be significantly less at \$2,800.00.

Observations and Closing Thoughts

The days of ineffective, expensive and time-consuming document review are finally over for most cases.⁵ Now, finally having removed the barriers to ILAS, we can strategically, inexpensively and quickly find the relevant documents. Instead of doing

⁴ This estimate does not include the cost of the more expensive senior quality control attorney or the time needed to train the document review lawyers.

⁵ Some cases may benefit from a blend of ILAS and linear document review.

document review, contract lawyers can now be used to create timelines, witness kits, and deposition outlines, further reducing litigation costs. And some of these contract lawyers, if given the opportunity to learn and use the technology, will become ILAS experts, providing increased value while reducing document review costs. The added benefit for these legally qualified professionals is the potential to apply their expertise in more stimulating ways and to deliver more rewarding outcomes.

We can talk about precision and recall, statistics, process and workflows indefinitely, but in the end, a perfect review that is prohibitively expensive is not a good review and an inexpensive review that gets the wrong results is worthless. In this study, the ILAS team delivered a better result in that it found more relevant documents in a fraction of the time and for a fraction of the cost.

The growth of e-discovery no longer means the death of litigation on the merits – to the contrary, the strategic use of talented individuals and targeted technologies will allow clients to get to the merits faster and more effectively.

=====

Anne Kershaw is an attorney and expert in e-discovery and legacy data management. In 2005 she conducted the first study comparing linear document review with technology assisted review, [Automated Document Review Proves its Reliability](#). Kershaw published two subsequent studies in 2010, [Document Categorization in Legal E-Discovery: Computer Classification vs. Manual Review](#) and [Mandating Reasonableness In A Reasonable Inquiry](#). Kershaw is a managing director at [Reasonable Discovery, LLC](#), is on the faculty of Columbia University's [Information and Knowledge Strategy](#) Master's Program, is on the Advisory Board for the Cardozo Law School Data Law Initiative and the Georgetown Advanced E-Discovery Institute, and was a presenter at workshops on e-discovery at the Federal Judicial Center's 2010, 2011 and 2014 Conferences for Magistrate Judges.

About EDT: For over a decade, EDT Software has established an international reputation in relation to its full lifecycle software that manages e-discovery, investigations, and litigation. EDT has been embraced by a world-wide client base including GLOBAL 100 law firms, top tier accounting firms, corporations, government agencies, forensic experts, consultants and service providers. For more information, visit <http://www.discoveredt.com>.

About [Reasonable Discovery, LLC](http://www.ReasonableDiscovery.com): Reasonable Discovery, LLC consultants are strategists who use litigation expertise and mastery of current technologies to provide clients with flexible, powerful solutions for collecting, interrogating and managing data. Using data to its full advantage doesn't have to be complex or expensive. With Reasonable Discovery, every case and every client has a reasonable and formidable alternative. www.ReasonableDiscovery.com.

Encryption and creating decrypted copies

The U.S. Attorney's office typically sends discovery in "**encrypted**" format, whether it is on media (CD Rom, USB drive, or hard drive) or through the internet (email or USAfx). Encryption adds a layer of protection by scrambling the data so files cannot be seen unless a digital "key" (password) is provided. The goal is to protect the data while it is being shipped in case it is lost or stolen.

"**Decryption**" is the process of converting the file so it is readable. **The first step you should take when you receive encrypted files is to create a decrypted copy of the files.** The decrypted copies will allow you to search, review and work with them on your computer that the encrypted files will not, and you will not need to enter a password each time to open them.

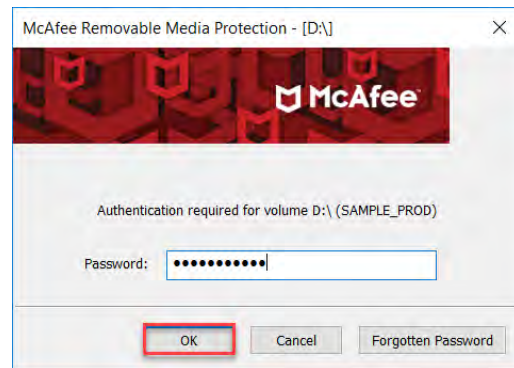
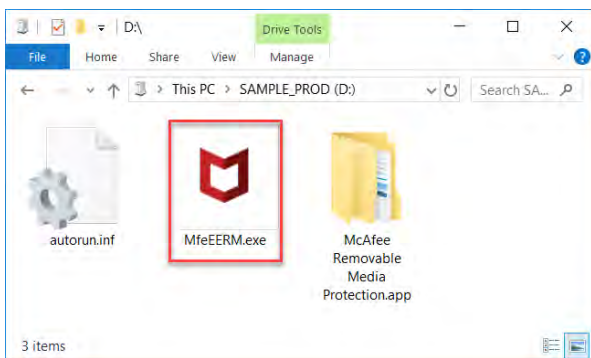
When receiving encrypted case related materials:

- 1. Look for cover letters and associated correspondence that mention password protection or encryption.** Often the sender will tell you that the files are encrypted and provide instructions on how to obtain the key (password). If the media contains encrypted files you cannot work with them unless you have that password.
- 2. Use a Windows computer.** Most decryption programs included on the media are designed to work with Windows computers. Sometimes decryption can be done on Mac computers, but often it requires additional software not included with the media.
- 3. Insert the media and look for either a "password" prompt or a decryption program.** Certain encryption programs (like Microsoft "Bitlocker") will automatically prompt for a password when the media is inserted. Other times the media will include Windows-based software programs that needs to be run.
- 4. Create decrypted copies of the files.** When you open a file that is encrypted a computer will typically only temporarily decrypt it. The file may be in a "read-only" mode that will not work well with most software programs, and will continue to need a password when reopening. Making a decrypted copy of the file will allow it to be correctly recognized by the programs on your computer and will no longer need a password when opening the copy.

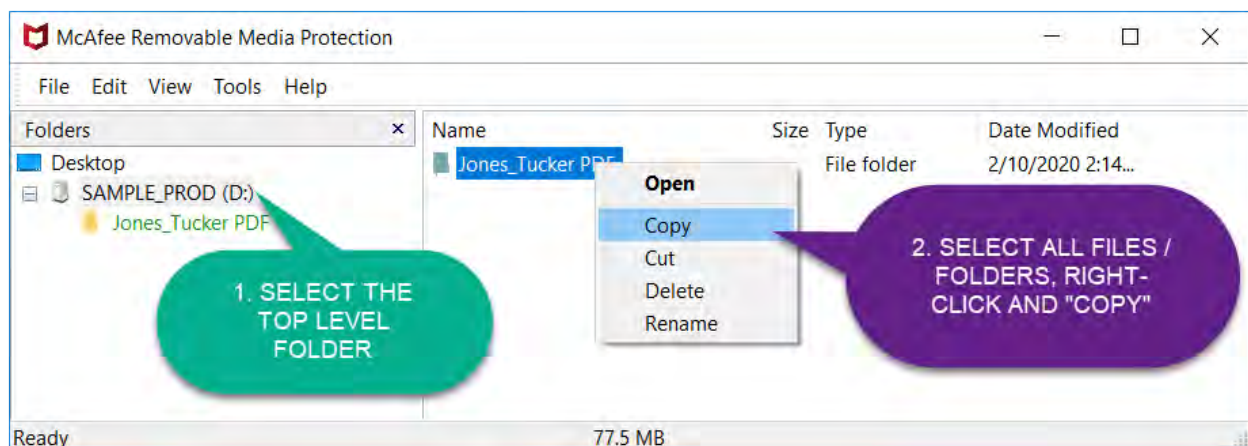
McAfee Removable Media Protection

“McAfee Removable Media Protection” is a common encryption program used by the USA’s when delivering discovery on thumb drives and CD/DVD discs. The media usually includes an executable file that when run will allow users to make decrypted copies of the files. To create decrypted copies:

- A. Create a destination.** Open File Explorer (the file browser on your computer) and navigate to a destination on your computer (or external drive) with enough room to hold a copy of the files. Create a folder that will keep the unencrypted copy of the files.
- B. Open McAfee.** Insert the media and look for an executable file called “MfeERM.exe”. Run the executable and look for a dialog window prompting for a password. Enter the password and click “OK”.



- C. Copy the files or folders.** From within McAfee:
 1. Select the “Top Level” folder from the left-hand navigation pane.
 2. From the main window (on the right side), select all of the files and folders listed, right-click on them and choose “Copy”.



- D. Paste the copies into the destination.** Switch back to File Explorer. Right-click on an empty space within the destination location and choose “Paste”. For larger sets of data (over 10,000 files/folders), try dividing the copy process into smaller batches of about 1,000 files / folders each. Verify the copied files can be opened by closing McAfee and opening a few of the copied files.

ANNOUNCEMENT

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Date: February 9, 2017
From: Sean Broderick
To: CJA Panel Attorney Representatives
CC: Federal Public and Community Defenders, Case Budgeting Attorneys, CJA Panel Administrators, Defender Automated Working Group (DAWG)
Re: *Box.com Available to CJA Panel Attorneys for Short Term Storage and Transfer of Data in Multi-Defendant Cases*

To assist CJA panel attorneys who need to share and transfer e-discovery in their multi-defendant CJA cases, the National Litigation Support Team (NLST) has obtained web-hosted repository ("cloud") space from Box.com. There is no cost to panel attorneys for using this service.

Box.com is a simple cloud-based collaboration program that allows users to store, access, share, and transfer electronic files and documents. The service encrypts all data and has additional security features. Users can store an unlimited number of files, for their own use or to share with others, without having to use remote access to office computers. Defense teams can use different devices (such as computers, tablets, or smartphones) to access case data anywhere they can connect to the internet. This allows CJA panel attorneys to share discovery and work product easily and efficiently in a secure environment.

Box.com is being used by the Department of Justice (DOJ) as their cloud service to distribute e-discovery to the defense. DOJ evaluated it against other similar products and concluded it best met their security standards.

Box.com is committed to ensuring that your data will remain as secure as possible, and providing strong customer support. They have worked closely with the NLST in designing a cloud service that effectively addresses CJA counsels' growing problem of moving and sharing large volumes of data. The NLST will work directly with each defense team to set up their cloud case folders, and to provide ongoing support of their use of Box.com.

The NLST will manage:

1. creating case folders to hold electronic information on a case in the cloud,
2. inviting team members ("collaborators") to help them get access to the cloud data, and,
3. granting rights of different team members to get into specific folders.

*Box.com Available to CJA Panel Attorneys for Short Term Storage and
Transfer of Data in Multi-Defendant Cases*

Because cloud contracts like this store case information on servers owned by Box.com, attorneys remain ultimately responsible for the use of this service. Before using it, CJA members should review their local bar opinions regarding the use of cloud computing and storage.¹

Once approved, the NLST will send you a form asking for the case details including who will serve as the “point of contact” for each defense team, and who on the team should be given access to the what files that have been stored on the cloud. Note that additional team members can be added later. The NLST will set up a short session to show all those who will use this cloud service how to navigate the system, and how to upload and download data. The NLST will be the team’s first point of contact if there are any questions about using Box.com, technical questions, or any concerns regarding using this cloud-based case information repository.

Please note that Box.com does not offer advanced e-discovery features found in online document review programs such as Relativity, Summation, or Catalyst. It does not have a database and other advanced tools for organizing, reviewing, and analyzing e-discovery. Rather, its purpose is for short-term storage and transfer of information in the “cloud.”

When the case has concluded, (or sooner if counsel no longer needs this service), the CJA lawyer must delete all case materials from Box.com. The NLST will help ensure the case files are deleted, and the case is properly closed. Counsel should always maintain a copy of all files on their office computer system (besides the information stored in the cloud), as only duplicate files should be stored on Box.com.

If you are interested in using Box.com for a multi-defendant case, or have further questions, please contact:

Kalei Achiu (kalei_achiu@fd.org or 510-250-6310) or,
Alex Roberts (alex_roberts@fd.org or 510-637-1955) or,
Kelly Scribner (kelly_scribner@fd.org or 510-637-1952.

¹ At least 19 state bar associations have written ethics opinions on its member’s responsibilities while using cloud computing services. Each of the 19 opinions permit using cloud computing but hold attorneys to a duty of “reasonable care,” with the specific requirements of reasonable care varying with each state.
https://www.americanbar.org/groups/departments_offices/legal_technology_resources/resources/charts_fyis/cloud-ethics-chart.html

Three Types of PDFs

Posted on **June 12, 2020** by **Sean Broderick**



PDFs (portable document format files) are a common file format in federal criminal discovery. But are all PDFs created equal? As you all have experienced, the answer is no, they are not.

Think about PDFs in three distinct categories:

1. True PDFs;
2. Image-based PDFs; and
3. Made-searchable PDFs.

For discovery review, these distinctions are important because it impacts whether the PDF is searchable and the accuracy of your text searches within the PDF file. With voluminous discovery, the ability to search and review PDFs is critical for organizing and reviewing it.

- **True PDFs (also known as text-based or digitally created PDFs).** These PDFs are created using software such as Microsoft Word, Excel, or using the "print to PDF" function in those programs. They consist of both text and images. We should think about these PDFs having two layers – one layer is the image and a second layer is the text. The image layer shows what the document will look like if it is printed to paper. The text layer is searchable text that is carried over from the original Word file into the new PDF file (the technical term for this layer is "extracted text"). There is no need to make it searchable and the new PDF will have the same text as the original Word file. An example of True PDFs that federal defenders and CJA panel attorneys will be familiar with are the pleadings filed in CM/ECF. The pleading is originally created in Word, but then the attorney either saves it as PDF or prints to PDF and they file that PDF document with the court. Using either process, there is now a PDF file created with an image layer plus text layer. **In terms of usability, this is the best type of PDF to receive in discovery as it will have the closest to text searchability of the original file.** [Click here to see an example of a True PDF.](#)
- **Image-based PDFs (also known as image-only PDFs).** Image-based PDFs are typically created through scanning paper in a copier, taking photographs or taking screenshots. To a computer, they are images. Though we humans can see text in the image, the file only consists of the image layer but not the searchable text layer that True PDFs contain. As a result, we cannot use a computer to search the text we see in the image as that text layer is missing. There are times when discovery is produced, it will be in an image-based PDF format. When you come across image-based PDFs, ask the U.S. Attorney's Office in what format was that file originally. Second, ask if they have it in a searchable format and specifically if they have it in a digitally created, True, Text-based PDF format. They may not, as they often receive PDFs from other sources before they provide them to you, but you will want to know what is the format in which they have it in, and what is the original format of the file (as far as they know). [Click here to see an example of an Image-based PDF.](#)
- **Made-searchable PDFs (also known as "OCRed" PDFs).** Image-based PDFs can be made text searchable by applying optical character recognition (OCR). CJA panel attorneys frequently use Adobe Acrobat Pro (or other PDF editor software) to make image-based PDFs searchable. During the OCR process, the software program interprets each character on the image as text

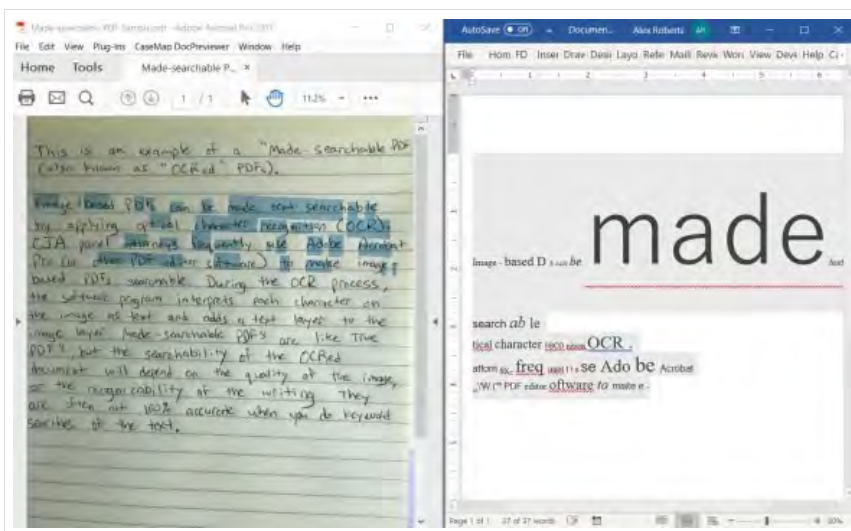
and adds a text layer to the image layer. Made-searchable PDFs are like True PDFs, but the searchability of the OCR'd document will depend on the quality of the image, or the recognizability of the writing. They are often not 100% accurate when you do keyword searches of the text. [Click here to see an example of a Made-searchable PDF.](#)

The [ESI Protocol](#) (formally known as the *Recommendations for Electronically Stored Information (ESI) Discovery Production in Federal Criminal Cases*) noted the limitations of OCR process on scanned paper.

"Generally speaking, OCR does not handle handwritten text or text in graphics well. OCR conversion rates can range from 50 to 98% accuracy depending on the underlying document. A full page of text is estimated to contain 2,000 characters, so OCR software with even 90% accuracy would create a page of text with approximately 200 errors."

People ask how accurate software programs are in the OCR conversion. That is important, but the biggest factor for how searchable your OCR PDF will become is the underlying quality of the scanned image. A clean copy of a pleading will have high accuracy; a twice photocopied school paper record from the 1950s will be less accurate.

A quick way to see what the quality of the text is compared to the image is to select the text in question in a PDF file (you can use Control + A in Windows or Command + A in Mac to copy all the text on a page), and then copy and paste the text into a Word document. Put the two files side by side and visually compare them.



This entry was posted in [Scanned Paper](#), [Search](#) and tagged [Acrobat](#), [Adobe](#), [Software](#) by [Sean Broderick](#). Bookmark the [permalink](#) [<https://nlsblog.org/2020/06/12/three-types-of-pdfs/>] .

1 THOUGHT ON "THREE TYPES OF PDFS"

Beth Massimino
on [June 15, 2020 at 9:19 am](#) said:

That was very helpful! Thanks, Sean.

Loading...

Comments are closed.

ANNOUNCEMENT

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From: Sean Broderick Date: October 21, 2016
To: Criminal Justice Act (CJA) Panel Attorneys
Re: *Limited licenses of dtSearch Desktop Software Available for CJA Panel Attorneys*

We are pleased to announce the continued availability of a dtSearch Desktop software license to CJA panel attorneys with current, active cases.

dtSearch is a popular search and retrieval program, and it is the search engine utilized in well known computer programs such as Forensic Tool Kit (FTK, a computer forensic tool), CaseMap and Adobe Acrobat Pro. This type of program is a useful tool to assist legal teams in searching discovery, creating brief banks, and viewing different file types (including non-PDF files) even if you don't have the associated application. We have a limited number of licenses available for CJA panel attorneys to use for free (a \$200 value).

The program provides great functionality in searching both electronic documents and paper documents that are subsequently scanned and converted to a text searchable format, especially since it can search and retrieve information in many different file types. dtSearch is a user friendly software program which provides immediate results and utility for even the novice computer user. As electronic discovery in federal criminal matters continues to grow in volume and in the variety of formats, dtSearch is a useful tool for CJA panel attorneys faced with the daunting task of organizing and searching through their case material.

To obtain the software, please fill out the dtSearch Request Form located at:

https://docs.google.com/forms/d/1KibRVAtcZdzCzj8HcGVWkAnZK3YN_aD6NWOaoW_cCdE/viewform

When finished filling out this form, press the "submit" button on the bottom of the form. This will attach your completed form to an email message sent to Assistant National Litigation Support Administrator Kelly Scribner (kelly_scribner@fd.org). You will then receive an email with download instructions and the activation code necessary to obtain your free copy of the dtSearch Desktop. Please allow up to 5 business days to process your request. Each user license can be installed for that user on two machines.

You must have an active appointed case to continue to utilize the license. If you are no longer on the panel and don't have an active appointed case, we request you return the license to the National Litigation Support Team (NLST) by contacting Kelly Scribner so the license can be used by other CJA panel attorneys. Like most litigation software programs, this program was developed for Windows-based operating systems and does not work with Macintosh operating systems.

For technical support or if you have any questions regarding the utilization of dtSearch within your office, please contact either Alex Roberts or Kelly Scribner (members of the NLST) at 510-637-3500, or by email: alex_roberts@fd.org, kelly_scribner@fd.org. If you want to learn more about dtSearch, go to <http://dtsearch.com/>.

Excel as an Organizational & Litigation Tool

AOKI LAW PLLC

Russell M. Aoki, Leslie Miller,
Isham Reavis & Kate Snow

DEFENDER SERVICES OFFICE

TRAINING DIVISION

Sean Broderick
National Litigation Support Administrator

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Introduction

Spreadsheets can be valuable tool for all phases of litigation, from trial preparation, trial, to sentencing. Spreadsheets offer an easy way to track, organize, and search through discovery, witnesses, government exhibits, and more. Using a spreadsheet, you can quickly filter and sort information, hyperlink to documents stored elsewhere, or generate timelines and charts in PowerPoint. This paper outlines five ways to incorporate Excel, Microsoft's spreadsheet program, into your trial preparation, execution and presentation:¹

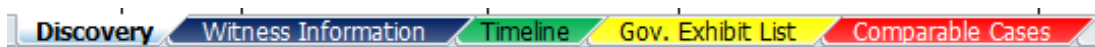
- Making and using a **Discovery Log**. This section also covers the basics of creating and using a spreadsheet:
 - o Copying from a PDF to a spreadsheet;
 - o Exporting data to a spreadsheet;
 - o Using the *sort* and *filter* function ins Excel; and
 - o Multiple ways to search a spreadsheet.
- Using a spreadsheet to **Track Witnesses**;
- Preparing a hyperlinked version of the **Government's Exhibit List**;
- Tabulating **Sentencing Comparison** data for making a sentencing recommendation; and
- Turning data into charts to copy and paste into a **PowerPoint Presentation**.

Excel and other spreadsheet software beat tabulating data in word processing programs like Word or WordPerfect due to their breadth of function—spreadsheets and word processors alike let you make a grid and fill the boxes with data, but spreadsheets allow you to sort data and filter that data to isolate or group particular results. It's the difference between displaying and using data.

In most cases Excel also edges out other spreadsheet software through sheer ubiquity: you almost certainly have a copy of the program on your computer already, as does every colleague and technology service provider with whom you might have occasion to share data. Microsoft makes versions of Excel for both Windows and Mac operating systems. But if you've established a preference for other spreadsheet software, you can still deploy the techniques discussed in this paper with only minor adjustments.

All the example spreadsheets used in this paper can be stored as separate tabs on a single Excel document:

Figure 0-1: Example Spreadsheet Tabs



¹ Several of the suggestions in this paper involve tabulating data regarding discovery. If your case warrants the use of a discovery database, these tasks will likely duplicate the work involved in coding your database. Because a discovery database will offer vastly superior capabilities than Excel or other spreadsheet software, you should consider using the database for these tasks.

Discovery Log

Excel spreadsheets can be used to organize and track discovery in a discovery log. An Excel discovery log puts all the information from the government's discovery indices in one place, and serves as a consolidated index of all discovery received. This helps the defense team because critical information, such as when discovery was received, whom it was received from, and what the disclosure contained is all organized in one accessible document. You may also find it a useful cross-reference to include within the discovery log hyperlinks to PDFs of the cover letters accompanying each discovery production.

The initial information for the spreadsheet should come from the discovery indices provided by the government. Government discovery indices may contain the Bates number range, the date the discovery was received, form of the discovery, custodian (who the discovery was received from), and sometimes a description of the documents.

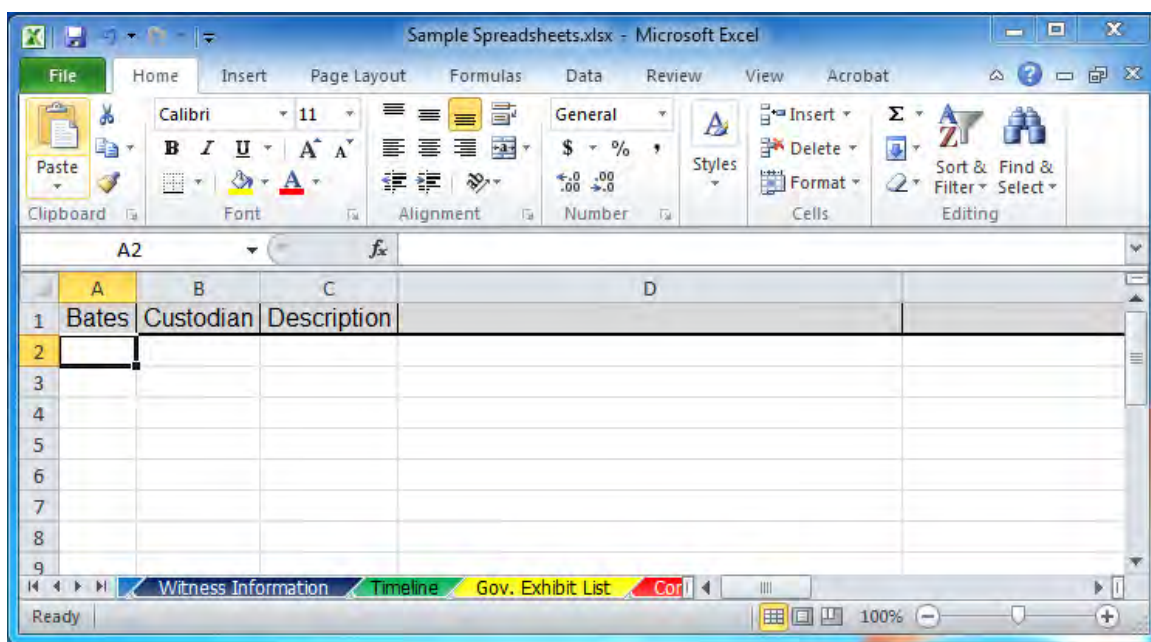
Figure 1-1 shows an excerpt from an example government index. To create the spreadsheet, start with the information in the discovery indices provided by the government. In the index below, there are only three columns.

Figure 1-1: Example Government Discovery Index

Beginning Bates Number	Ending Bates Number	Custodian/Location Records Obtained From
FBAR 000001	FBAR 000046	FBAR Transcripts (foreign bank accounts)
HRB000072	HRB 000084	Screen shots from H&R Block's Tax Preparation System
MLAT0001760	MLAT0001797	Documents pertaining to the Australian MLAT request
OR DMV 000001	OR DMV 000019	Documents from the Oregon DOT Driver & Motor Vehicle Services

Figure 1-2 shows an example discovery log within an Excel spreadsheet. The discovery log's column headings are similar to those in the government index, though *Custodian/Location Records Obtained From* has been split into *Custodian* and *Description*, and the beginning and ending Bates ranges have also been combined into one column.

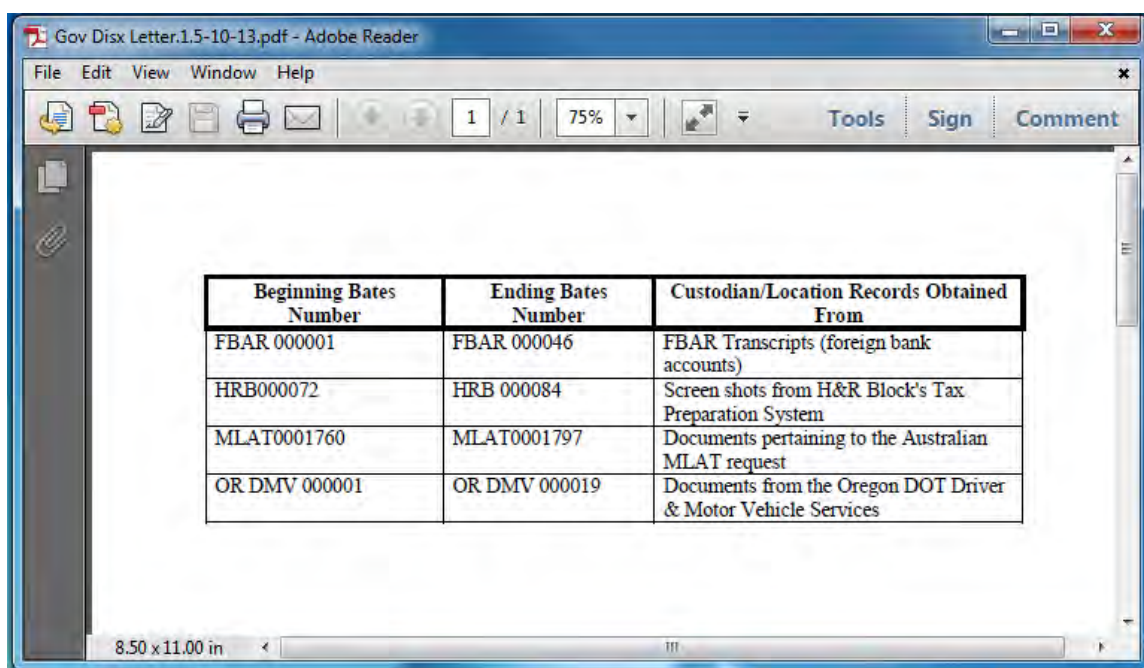
Figure 1-2: Example Discovery Log



If you have searchable PDFs of the government's indices, you may be able to copy and paste the information into the discovery spreadsheet. When using the copy-and-paste-function, you may find differences in the quality of text copied from a computer-generated document compared with scanned paper that was made searchable with optical character recognition. Be sure to check the latter for errors.

To transfer the information, open the searchable PDF in an Adobe Acrobat program (Adobe Reader, Acrobat Standard, or Acrobat Pro).

Figure 1-3: Government Discovery Index Viewed in Adobe Reader



Highlight the desired text with your cursor, then right-click on the highlighted text. A menu will open giving you the option to *Copy* the highlighted text. You can also press the *Ctrl* and *C* keys to copy the text (or *Command* (it has a ⌘ symbol) and *C* keys for Mac users).

Figure 1-4a: Selecting and Copying Text from the Index

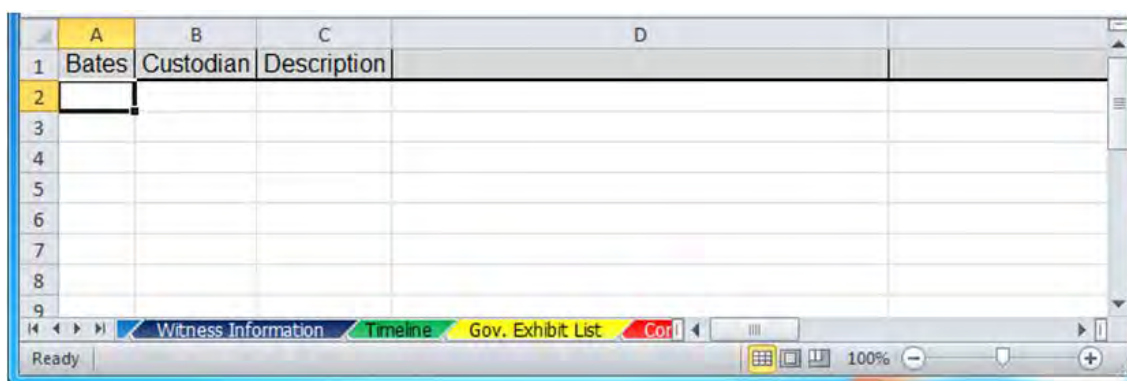
Beginning Bates Number	Ending Bates Number	Custodian/Location Records Obtained From
FBAR 000001	FBAR 000046	FBAR Transcripts (foreign bank accounts)
HRB000072	HRB 000084	Screen shots from H&R Block's Tax Preparation System
MLAT0001760	MLAT0001797	Documents pertaining to the Australian MLAT request
OR DMV 000001	OR DMV 000019	Documents from the Oregon DOT Driver & Motor Vehicle Services

Figure 1-4b Right-Click Dialogue Box

Beginning Bates Number	Ending Bates Number	Custodian/Location Records Obtained From
FBAR 000001	FBAR 000046	FBAR Transcripts (foreign bank accounts)
HRB 000072	HRB 000084	Screen shots from H&R Block's Tax Preparation System
MLAT0001760	MLAT0001797	Documents pertaining to the Australian MLAT request
OR DMV 000001	OR DMV 000019	Documents from the Oregon DOT Driver & Motor Vehicle Services

Next, select the cell in your Excel spreadsheet where you want the data to be placed.

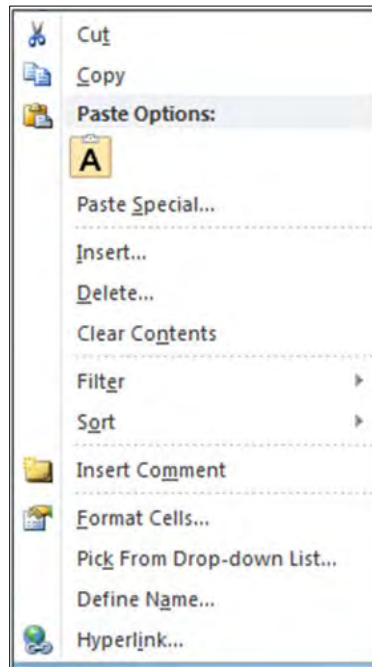
Figure 1-5: Selecting Destination Cell in Discovery Log



	A	B	C	D
1	Bates	Custodian	Description	
2				
3				
4				
5				
6				
7				
8				
9				

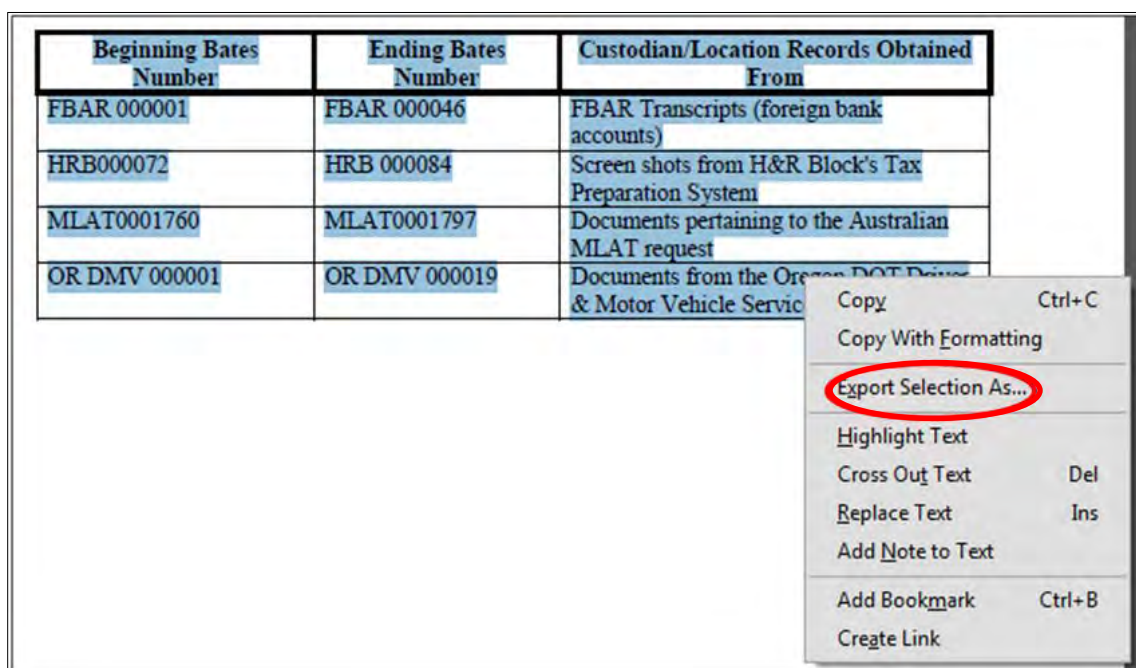
Right click on the cell and select *Paste*. You can also press the *Ctrl* and *V* keys to paste into the cell.

Figure 1-6: Pasting Data into Discovery Log



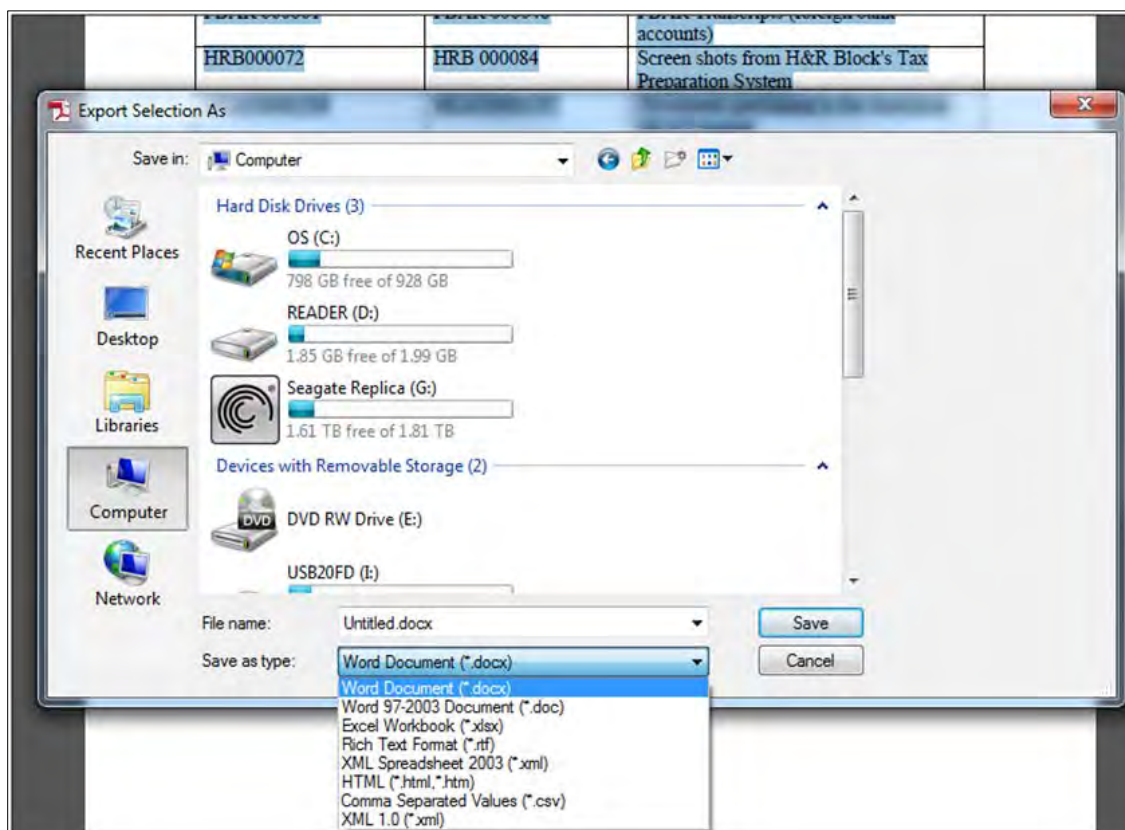
The information you copy and paste from the discovery indices will form the basis for your discovery spreadsheet. If you are using Adobe Reader, a free PDF viewer, you'll likely have to copy and paste each cell of information individually. Acrobat Standard and Acrobat Pro offer more functionality, allowing you to export text from PDF tables directly into a spreadsheet. Highlight the entire discovery index (use *Ctrl* and *A*, or use menu *Edit* and *Select All*), then right-click on the selection. Choose the menu item *Export Selection As...* to open a dialogue box where you'll choose the type of you want to save the selected text as.

Figure 1-7: Exporting Data in Acrobat Standard or Pro



Among your file-type options will be *Microsoft Excel Workbook* (a workbook is an Excel spreadsheet). Choose that one.

Figure 1-8: Export Format Options



This exports the selection to Excel, creating a new spreadsheet mirroring the PDF discovery index:

Figure 1-9: Government Index Exported into an Excel Spreadsheet

	A	B	C
	Beginning Bates Number	Ending Bates Number	Custodian/Location Records Obtained From
1	FBAR 000001	FBAR 000046	FBAR Transcripts (foreign bank accounts)
2	HRB000072	HRB 000084	Screen shots from H&R Block's Tax Preparation System
3	MLAT0001760	MLAT0001797	Documents pertaining to the Australian MLAT request
4	OR DMV 000001	OR DMV 000019	Documents from the Oregon DOT Driver & Motor Vehicle Services

Copy and paste the information in this new spreadsheet into your discovery log. Figure 1-10 shows a discovery log spreadsheet with all the information from the government's discovery index.

Figure 1-10: Discovery Log Populated with Information from Discovery Index

	A	B	C	D	E	F	G
	Bates	Custodian	Description				
1	FBAR 000001-FBAR 000046		FBAR Transcripts (foreign bank accounts)				
2	HRB000072-HRB 000084		Screen shots from H&R Block's Tax Preparation System				
3	MLAT0001760-MLAT0001797		Documents pertaining to the Australian MLAT request				
4	OR DMV 000001-OR DMV 000019		Documents from the Oregon DOT Driver & Motor Vehicle Services				
5	00065-000110		Articles of Incorporation from Washington Secretary of State				
6	000111-000114		Company billing records for Costco account				
7	FEDDECTR_000608-FEDDECTR_001787		FDC calls and emails of client from 5/10/2013-6/13/2013				
8	MLAT0001798-MLAT0001998		Documents pertaining to the Australian MLAT request				

You can add columns for other useful information to your discovery log spreadsheet. A *Label* column, indicating the label on the disk used to produce discovery, helps you identify on which disk a specific document was produced without reading through all of the government's discovery indices. Other possible information columns include the

date you received the discovery, the media of production, and who provided the discovery (the government as opposed to previous counsel, for example). You will find most of this information in the discovery indices or from your personal experience. Some U.S. Attorney's Offices will also inform you of the custodian for each item of discovery; other times you can glean this from the discovery index. In Figure 1-10's example, the government identifies custodians in the description.

Figure 1-11 shows a discovery log with columns added for additional information regarding the manner of production.

Figure 1-11: Discovery Log with Additional Production Information

	A	B	C	D	E	F	G
1	Date Rec'd	Media	Label	Rec'd From	Bates	Custodian	Description
2	5/10/2013	CD	Production 1	Gov't	FBAR 000001-FBAR 000046	Bank of Russia	FBAR Transcripts (foreign bank accounts)
3	5/10/2013	CD	Production 1	Gov't	HRB000072-HRB 000084	H&R Block	Screen shots from H&R Block's Tax Preparation System
4	5/10/2013	CD	Production 1	Gov't	MLAT0001760-MLAT0001797	Bank of Australia	Documents pertaining to the Australian MLAT request
5	5/10/2013	CD	Production 1	Gov't	OR DMV 000001-OR DMV 000019	Oregon DOT	Documents from the Oregon DOT Driver & Motor Vehicle Services
6	6/14/2013	CD	Disx Produced 6/14/2013	Gov't	00065-000110	Washington SOC	Articles of Incorporation from Washington Secretary of State
7	6/14/2013	CD	Disx Produced 6/14/2013	Gov't	000111-000114	Costco	Company billing records for Costco account
8	6/14/2013	CD	Disx Produced 6/14/2013	Gov't	FEDDETR_000608-FEDDETR_001787	Gov't	FDC calls and emails of client from 5/10/2013-6/13/2013
9	6/15/2013	CD	Disx Produced 6/14/2013	Gov't	MLAT0001798-MLAT0001998	Bank of Australia	Documents pertaining to the Australian MLAT request
					MLAT 0001274		Agent notes from interview of IDS

You can also use your discovery log to track information relevant to building a defense. Flesh out descriptions with these helpful details: rather than identifying the discovery as "bank records," it may be more helpful to know whether the bank records belong to a particular business, your client, or another defendant. Tracking what discovery has been sent to your client may also be a useful tool in your discovery log. Other columns will vary depending on the specific details of your case.

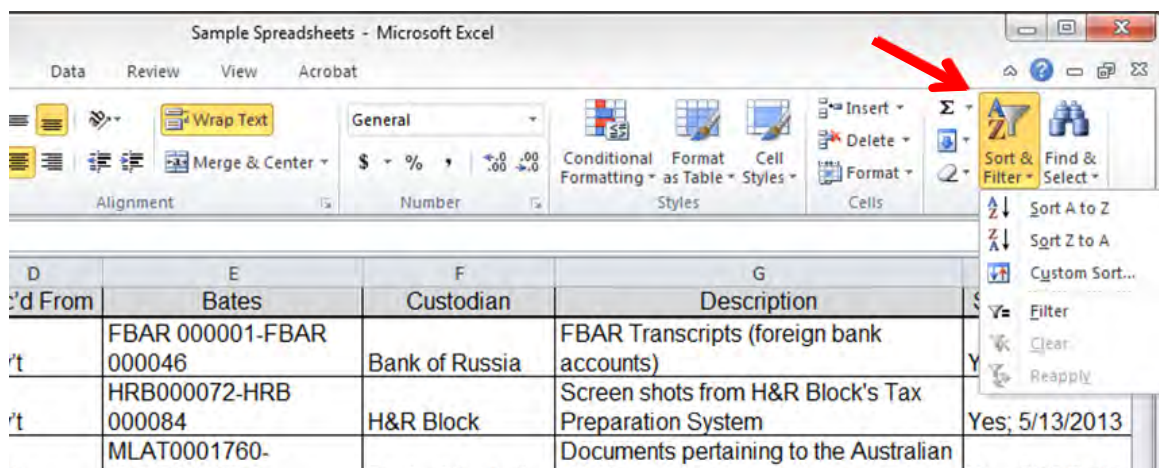
Figure 1-12: Discovery Log with Additional Defense Information

	A	B	C	D	E	F	G	H
1	Date Rec'd	Media	Label	Rec'd From	Bates	Custodian	Description	Sent to Client?
2	5/10/2013	CD	Production 1	Gov't	FBAR 000001-FBAR 000046	Bank of Russia	FBAR Transcripts (foreign bank accounts)	Yes; 5/13/2013
3	5/10/2013	CD	Production 1	Gov't	HRB000072-HRB 000084	H&R Block	Screen shots from H&R Block's Tax Preparation System	Yes; 5/13/2013
4	5/10/2013	CD	Production 1	Gov't	MLAT0001760-MLAT0001797	Bank of Australia	Documents pertaining to the Australian MLAT request	Yes; 5/13/2013
5	5/10/2013	CD	Production 1	Gov't	OR DMV 000001-OR DMV 000019	Oregon DOT	Documents from the Oregon DOT Driver & Motor Vehicle Services	Yes; 5/13/2013
6	6/14/2013	CD	Disx Produced 6/14/2013	Gov't	00065-000110	Washington SOC	Articles of Incorporation from Washington Secretary of State	Yes; 6/16/2013
7	6/14/2013	CD	Disx Produced 6/14/2013	Gov't	000111-000114	Costco	Company billing records for Costco account	Yes; 6/16/2013
8	6/14/2013	CD	Disx Produced 6/14/2013	Gov't	FEDDETCTR_000608-FEDDETCTR_001787	Gov't	FDC calls and emails of client from 5/10/2013-6/13/2013	Yes; 6/16/2013
9	6/15/2013	CD	Disx Produced 6/14/2013	Gov't	MLAT0001798-MLAT0001998	Bank of Australia	Documents pertaining to the Australian MLAT request	Yes; 6/16/2013
10	6/22/2013	PDF	n/a	Gov't	WITN_0004274-WITN_0004278	IRS	Agent notes from Interview of IRS employee J. Doe	Yes; 6/22/2013
11	7/1/2013	CD	Bank Records	Gov't	BC 000001-BC 000079	Bank of Centralia	Client's bank records	Yes; 7/6/2013
12	7/1/2013	CD	Bank Records	Gov't	USBANK 000001-USBANK 001913	US Bank	Client's bank records	Yes; 7/6/2013
13	7/1/2013	CD	Grand Jury Docs.	Gov't	WITN 0001186-WITN 0002150	Gov't	Grand Jury Transcripts of IRS Agent	Yes; 7/6/2013
14	9/2/2013	CD	MLAT0001-MLAT0239	Gov't	MLAT0001-MLAT0239	Bank of Germany	Documents from foreign bank account	Yes; 9/4/2013
15	9/3/2013	CD	WF0001-WF1879	Wells Fargo	WF0001-WF1879	Wells Fargo	Client's bank records	Yes; 9/6/2013
16	9/10/2013	PDF	n/a	Gov't	GJ0001-GJ0146	Gov't	Grand Jury Transcripts	Yes; 9/15/2013
17	10/10/2013	CD	MLAT0001999-MLAT0002356	Gov't	MLAT0001999-MLAT0002356	Bank of Australia	Documents pertaining to the Australian MLAT request	Yes; 10/13/2013

Note that if you'll be using a discovery database, you probably will want to skip the duplicative work of adding more detailed information to your discovery log.

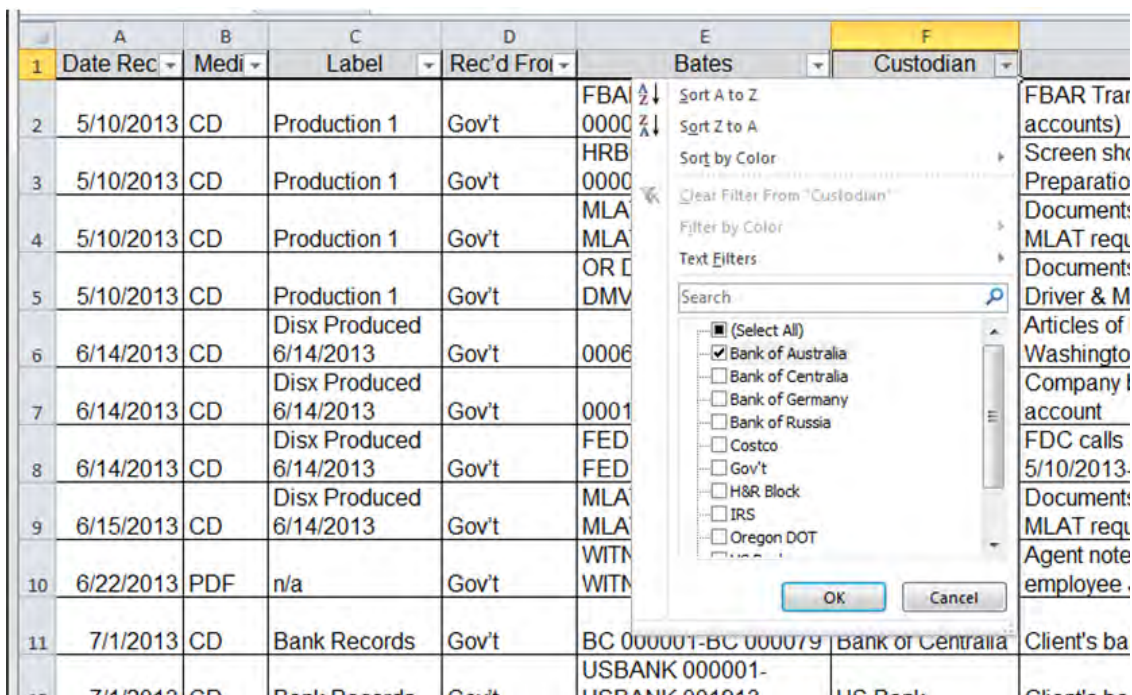
The chief benefit of putting data into a spreadsheet is the ability to filter, search, and sort. This makes discovery easier to find and manage. To make a spreadsheet searchable and sortable, select the row with the column headings (column headings are labeled A, B, C, etc.; when you select a heading the entire column changes color). Then select the **Sort & Filter** button, in the upper-right corner of the menu.

Figure 1-13: Sort & Filter Button



Select *Filter*. Boxes containing small downward-pointing arrows will appear at the top of each column. Click on these arrows to filter for specific information in a column. For example, to isolate discovery only from Bank of Australia, click on the arrow next to *Custodian* and then select *Bank of Australia* on the drop down menu.

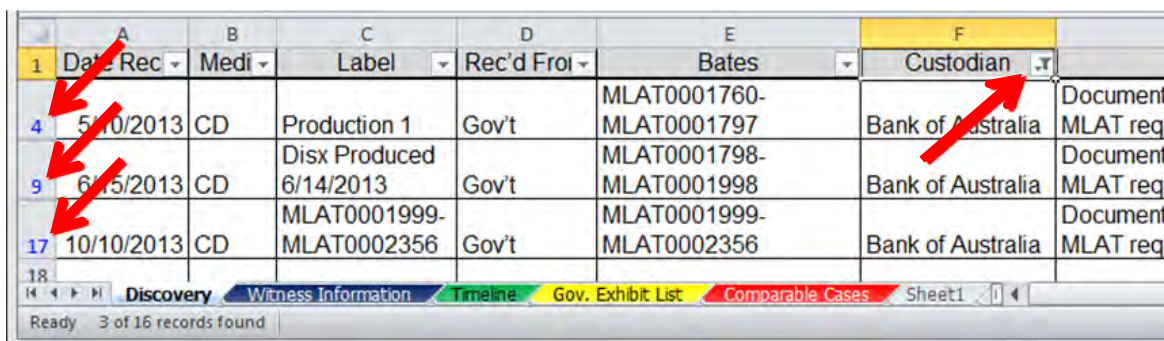
Figure 1-14: Filtering by Information in the Custodian Column



	A	B	C	D	E	F
	Date Rec	Medi	Label	Rec'd From	Bates	Custodian
1						
2	5/10/2013	CD	Production 1	Gov't	FBAI 0000	
3	5/10/2013	CD	Production 1	Gov't	HRB 0000	
4	5/10/2013	CD	Production 1	Gov't	MLA 0000	
5	5/10/2013	CD	Production 1	Gov't	OR 0000	
6	6/14/2013	CD	Disx Produced 6/14/2013	Gov't	0006	
7	6/14/2013	CD	Disx Produced 6/14/2013	Gov't	0001	
8	6/14/2013	CD	Disx Produced 6/14/2013	Gov't	FED	
9	6/15/2013	CD	Disx Produced 6/14/2013	Gov't	MLA	
10	6/22/2013	PDF	n/a	Gov't	WITN	
11	7/1/2013	CD	Bank Records	Gov't	BC 000001-BC 000079	Bank of Centra
12	7/1/2013	CD	Bank Records	Gov't	USBANK 000001-USBANK 000012	US Bank

After clicking *OK*, all documents except those received from Bank of Australia will be hidden. A filter symbol will appear anytime the filter function is being used (you can see the hidden documents again by clicking on the filter icon, then un-checking the filter). Another way to tell if the documents are filtered is the row numbers on the far left are blue rather than black.

Figure 1-15: Indicia of Filtering—Blue Row Numbers and Filter Icon



	A	B	C	D	E	F
	Date Rec	Medi	Label	Rec'd From	Bates	Custodian
1						
4	5/10/2013	CD	Production 1	Gov't	MLAT0001760-MLAT0001797	Bank of Australia
9	6/15/2013	CD	Disx Produced 6/14/2013	Gov't	MLAT0001798-MLAT0001998	Bank of Australia
17	10/10/2013	CD	MLAT0001999-MLAT0002356	Gov't	MLAT0001999-MLAT0002356	Bank of Australia
18						

Ready 3 of 16 records found

You can also search your spreadsheet for a specific term. Click on the arrow at the top of the column you want to search, type the desired term into the search box, and press *OK*. Figure 1-16 shows a search within the *Description* column for the term “bank.”

Figure 1-16: Example Search

	A	B	C	D	E	F	G	H
	Date Rec	Medi	Label	Rec'd Froi	Bates	Custodian	Description	Sent to Client
2	5/10/2013	CD	Production 1	Gov't	FBAR 000001-FBAR 000046	Bank of Russia		Yes, 5/13/2013
3	5/10/2013	CD	Production 1	Gov't	HRB000072-HRB 000084	H&R Block		Yes, 5/13/2013
4	5/10/2013	CD	Production 1	Gov't	MLAT0001760-MLAT0001797	Bank of Australia		Yes, 5/13/2013
5	5/10/2013	CD	Production 1	Gov't	OR DMV 000001-OR DMV 000019	Oregon DOT		Yes, 5/13/2013
6	6/14/2013	CD	Disx Produced 6/14/2013	Gov't	00065-000110	Washington SOC		Yes, 6/16/2013
7	6/14/2013	CD	Disx Produced 6/14/2013	Gov't	000111-000114	Costco		Yes, 6/16/2013
8	6/14/2013	CD	Disx Produced 6/14/2013	Gov't	FEDDETCTR_000608-FEDDETCTR_001787	Gov't		Yes, 6/16/2013
9	6/15/2013	CD	Disx Produced 6/14/2013	Gov't	MLAT0001798-MLAT0001998	Bank of Australia		Yes, 6/16/2013
10	6/22/2013	PDF	n/a	Gov't	WITN_0004274-WITN_0004278	IRS		Yes, 6/22/2013
11	7/1/2013	CD	Bank Records	Gov't	BC 000001-BC 000079	Bank of Centralia	Client's bank records	Yes, 7/6/2013
12	7/1/2013	CD	Bank Records	Gov't	USBANK 000001-USBANK 001913	US Bank	Client's bank records	Yes, 7/6/2013
13	7/1/2013	CD	Grand Jury Docs.	Gov't	WITN 0001166-WITN 0002150	Gov't	Grand Jury Transcripts of IRS Agent	Yes, 7/6/2013
14	9/2/2013	CD	MLAT0001-MLAT0239	Gov't	MLAT0001-MLAT0239	Bank of Germany	Documents from foreign bank account	Yes, 9/4/2013
15	9/3/2013	CD	WF0001-WF1879	Wells Fargo	WF0001-WF1879	Wells Fargo	Client's bank records	Yes, 9/6/2013
16	9/10/2013	PDF	n/a	Gov't	GJ0001-GJ0146	Gov't	Grand Jury Transcripts	Yes, 9/15/2013
17	10/10/2013	CD	MLAT0001999-MLAT0002356	Gov't	MLAT0001999-MLAT0002356	Bank of Australia	Documents pertaining to the Australian MLAT request	Yes, 10/13/2013

After searching using “bank,” only records with the term “bank” in the description column remain visible.

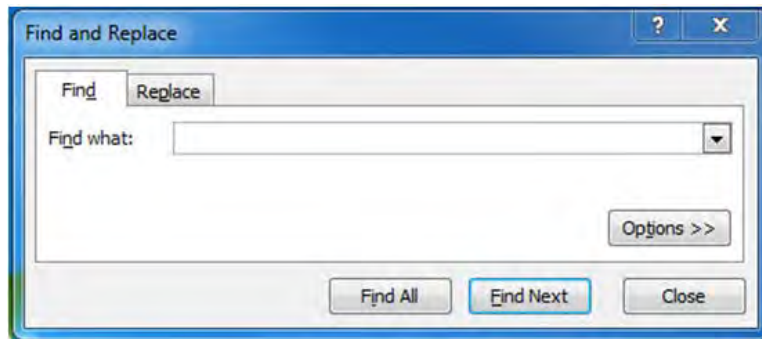
Figure 1-17: Search Results

	A	B	C	D	E	F	G	H
	Date Rec	Medi	Label	Rec'd Froi	Bates	Custodian	Description	Sent to Client
2	5/10/2013	CD	Production 1	Gov't	FBAR 000001-FBAR 000046	Bank of Russia	FBAR Transcripts (foreign bank accounts)	Yes, 5/13/2013
11	7/1/2013	CD	Bank Records	Gov't	BC 000001-BC 000079	Bank of Centralia	Client's bank records	Yes, 7/6/2013
12	7/1/2013	CD	Bank Records	Gov't	USBANK 000001-USBANK 001913	US Bank	Client's bank records	Yes, 7/6/2013
14	9/2/2013	CD	MLAT0001-MLAT0239	Gov't	MLAT0001-MLAT0239	Bank of Germany	Documents from foreign bank account	Yes, 9/4/2013
15	9/3/2013	CD	WF0001-WF1879	Wells Fargo	WF0001-WF1879	Wells Fargo	Client's bank records	Yes, 9/6/2013

As with filtering, after using the search function a filter icon will appear in the column you searched.

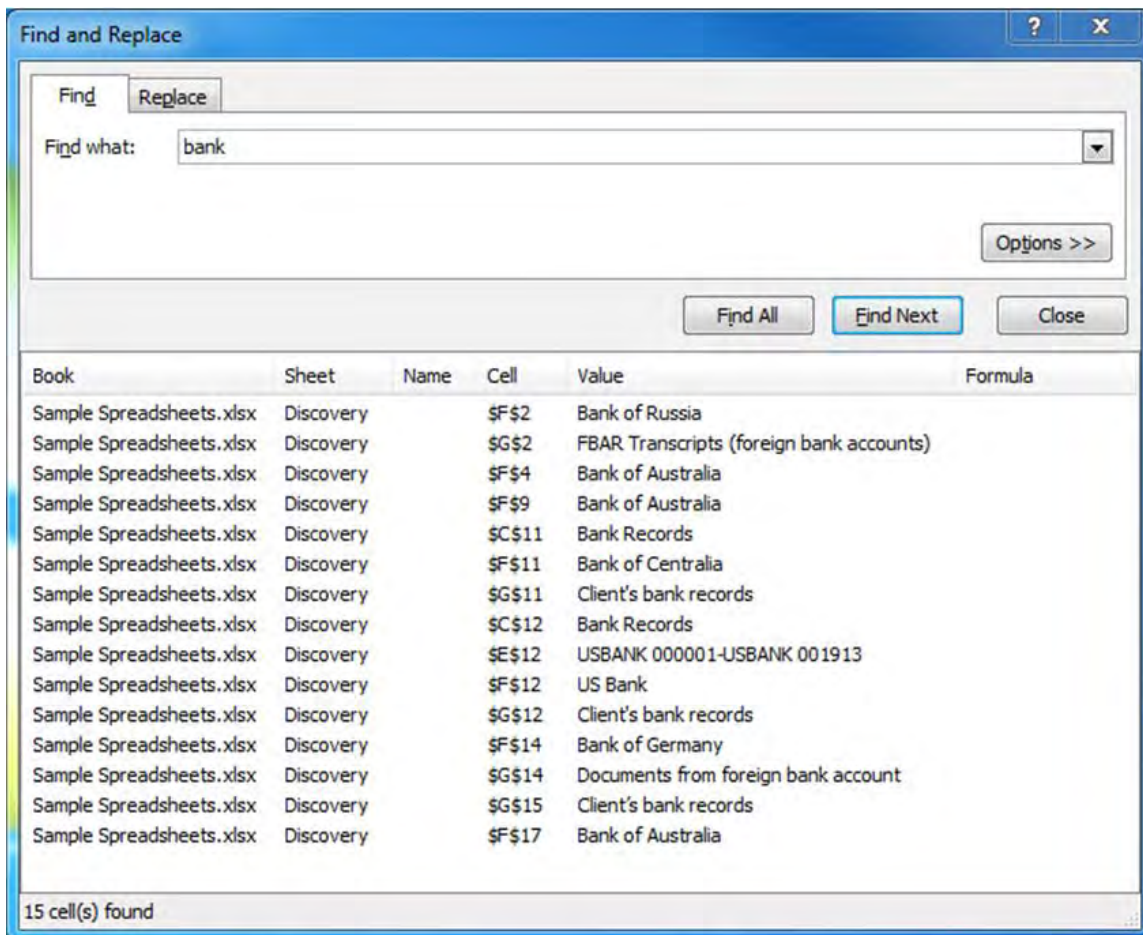
You can find keywords within an entire spreadsheet (instead of a specific column) by using the *Find* function. Simultaneously press the *Ctrl* and *F* keys then enter a search term in the dialogue box.

Figure 1-18: Full-Document Search Dialogue Box



If you select *Find All*, a list will appear showing every instance of the search term in the spreadsheet. The *Value* column will display how the word was used so you can quickly determine if the result is relevant. Select any row in the results to access the corresponding cell in the spreadsheet. In Figure 1-19, we again searched for the term “bank,” yielding fifteen results.

Figure 1-19: Full-Document Search Results



You can also review all of the cells where the search term was mentioned by selecting *Find Next*. Continuing to select this will allow you to review all of the responsive cells.

Track Witnesses

You can also use a spreadsheet to keep track of information about potential witnesses. This is especially helpful in a case with numerous witnesses. A witness information spreadsheet can tabulate information such as the witness' attorney, basic information regarding the witness, Bates number of witness statement, and whether the witness has been interviewed. You can also include all sorts of information (such as contact information), but for this example we will keep it more limited. Again, the ability to sort and filter data makes an Excel spreadsheet an especially useful.

Figure 2-1: Witness Information Spreadsheet Tab

	A	B	C	D	E	F	G	H
	Witness Name	Defense or Prosecution?	Information	Witness Statement	Materials to Investigator	Interviewed?	Counsel?	Notes
2	Malcolm Howard	P	Employee at CPA firm	n/a	n/a	No	Y, J. Jones	Atty. Declined interview
3	Taylor Thompson	D	Defendant's Personal Assistant	n/a	n/a	Yes, 3/12/13		
4	Edward Smith	D	Business Associate	WITN_0000053	Yes			
5	Christina Lopez	P	VP at Zions bank	WITN_0000148	Yes		Y, M. Time	
6	Debbie Dolittle	P	Resident at Vista Apartments	WITN_0000152	Yes	Pending		
7	Penelope King	D	Close friend of Defendant; local real estate agent	WITN_0000263	Yes	Yes, 1/28/13		Subpoena issued 2/1/13
8	Xavier Hernandez	D	CPA & Accountant for companies	WITN_0000501; Grand Jury Testimony	Yes	Yes, 12/14/12	Y, M. Smith	
9	Peter Kempler	P	Business Associate	WITN_0000589	Yes	Yes, 1/28/13		
10	Ryan Sweet	P	Real Estate Broker	WITN_0001789	Yes	Pending		
11	David Hill	D	Manager at US Bank	WITN_0002145	Yes			
12	Brenda Doe	P	Apartment Complex Property Manager	WITN_0002226, 2227, 2228, 2229	No	n/a		No longer employed at Vista Apartments
13	Brian Anderson	P	Manager of Gold Buyers of America	WITN_0002242, 2244	No	n/a		
14	Francis Johnson	P	Employee of Downey Savings Bank	WITN_0003168	Yes			

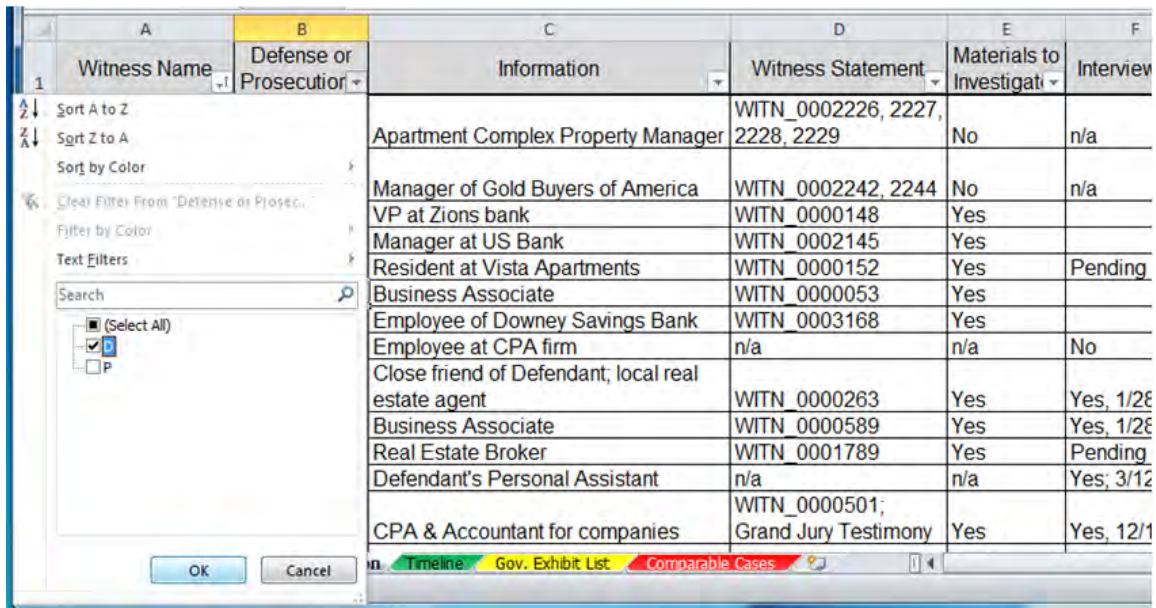
The *Sort & Filter* function also enables you to quickly alphabetize a list. In the spreadsheet sample above, the witness names are not entered in alphabetical order. The spreadsheet allows you to quickly sort data from A to Z as shown in Figure 2-2.

Figure 2-2: A–Z Sorting

	A	B	C	D	E	F	G	H
	Witness Name	Defense or Prosecution?	Information	Witness Statement	Materials to Investigator	Interviewed?	Counsel?	Notes
2	Malcolm Howard	P	Employee at CPA firm	n/a	n/a	No	Y, J. Jones	Atty. Declined interview
3	Taylor Thompson	D	Defendant's Personal Assistant	n/a	n/a	Yes, 3/12/13		
4	Edward Smith	D	Business Associate	WITN_0000053	Yes			
5	Christina Lopez	P	VP at Zions bank	WITN_0000148	Yes		Y, M. Time	
6	Debbie Dolittle	P	Resident at Vista Apartments	WITN_0000152	Yes	Pending		
7	Penelope King	D	Close friend of Defendant; local real estate agent	WITN_0000263	Yes	Yes, 1/28/13		Subpoena issued 2/1/13
8	Xavier Hernandez	D	CPA & Accountant for companies	WITN_0000501; Grand Jury Testimony	Yes	Yes, 12/14/12	Y, M. Smith	
9	Peter Kempler	P	Business Associate	WITN_0000589	Yes	Yes, 1/28/13		
10	Ryan Sweet	P	Real Estate Broker	WITN_0001789	Yes	Pending		
11	David Hill	D	Manager at US Bank	WITN_0002145	Yes			
12	Brenda Doe	P	Apartment Complex Property Manager	WITN_0002226, 2227, 2228, 2229	No	n/a		No longer employed at Vista Apartments
13	Brian Anderson	P	Manager of Gold Buyers of America	WITN_0002242, 2244	No	n/a		
14	Francis Johnson	P	Employee of Downey Savings Bank	WITN_0003168	Yes			

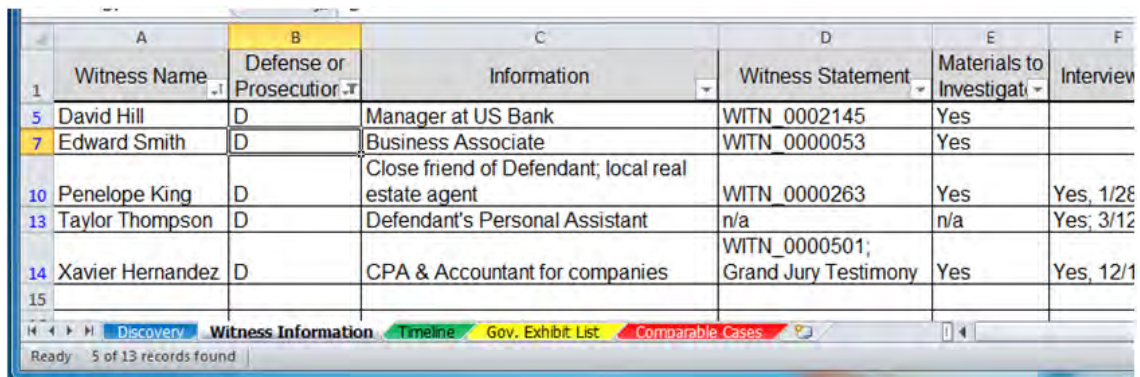
Excel can also filter columns to show only witnesses for the defense or prosecution:

Figure 2-3: Filtering for Defense Witnesses



A	B	C	D	E	F
Witness Name	Defense or Prosecution	Information	Witness Statement	Materials to Investigate	Interview
Apartment Complex Property Manager			WITN_0002226, 2227, 2228, 2229	No	n/a
Manager of Gold Buyers of America			WITN_0002242, 2244	No	n/a
VP at Zions bank			WITN_0000148	Yes	
Manager at US Bank			WITN_0002145	Yes	
Resident at Vista Apartments			WITN_0000152	Yes	Pending
Business Associate			WITN_0000053	Yes	
Employee of Downey Savings Bank			WITN_0003168	Yes	
Employee at CPA firm			n/a	n/a	No
Close friend of Defendant; local real estate agent			WITN_0000263	Yes	Yes, 1/28
Business Associate			WITN_0000589	Yes	Yes, 1/28
Real Estate Broker			WITN_0001789	Yes	Pending
Defendant's Personal Assistant			n/a	n/a	Yes; 3/12
CPA & Accountant for companies			WITN_0000501; Grand Jury Testimony	Yes	Yes, 12/1

Figure 2-4: Filter Results Showing Only Defense Witnesses



A	B	C	D	E	F
Witness Name	Defense or Prosecution	Information	Witness Statement	Materials to Investigate	Interview
David Hill	D	Manager at US Bank	WITN_0002145	Yes	
Edward Smith	D	Business Associate	WITN_0000053	Yes	
Penelope King	D	Close friend of Defendant; local real estate agent	WITN_0000263	Yes	Yes, 1/28
Taylor Thompson	D	Defendant's Personal Assistant	n/a	n/a	Yes; 3/12
Xavier Hernandez	D	CPA & Accountant for companies	WITN_0000501; Grand Jury Testimony	Yes	Yes, 12/1

Just as with the discovery log shown above, you can search for information within a column of the witness spreadsheet. If, for example, you do not remember a witness' name but know they worked at US Bank, searching for "US Bank" in the *Information* column will limit the number of potential witnesses.

Government's Exhibit List

Excel can be used to create a hyperlinked spreadsheet for the government's exhibit list. Because the spreadsheet is both sortable and searchable, it allows for exhibits to be readily accessed during trial preparation and at trial.

The nature of the case will dictate the columns created in the spreadsheet. All exhibit list spreadsheets will likely include the following:

- The exhibit number;
- Document title;
- Bates number; and
- Hyperlink to electronic copy of the document.

Figure 3-1: Example Exhibit List

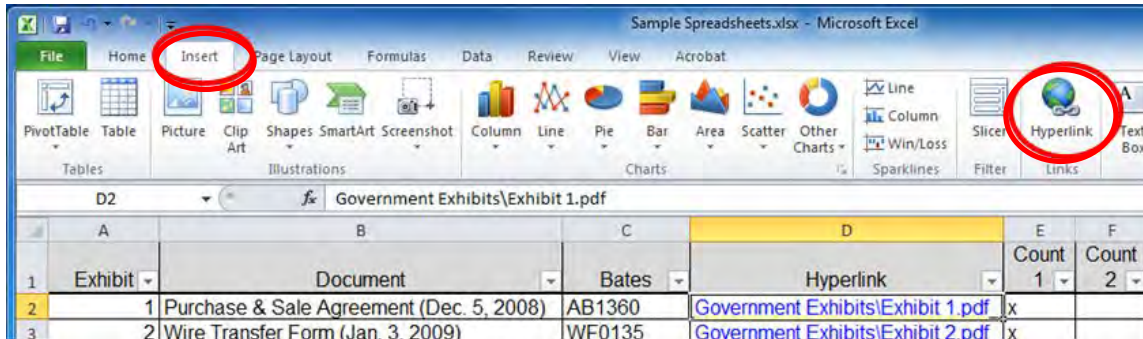
	A	B	C	D	E	F	G	H	I	J
	Exhibit	Document	Bates	Hyperlink	Count 1	Count 2	Count 3	Count 4	Defendant 1	Defendant 2
2	1	Purchase & Sale Agreement (Dec. 5, 2008)	AB1360		x				x	
3	2	Wire Transfer Form (Jan. 3, 2009)	WF0135		x				x	
4	3	Handwritten note from Bus. Assoc. No. 3	SW0506			x	x		x	
5	4	Check No. 14422 Payable from RV Wholesalers to Defendant 1, dated October 19, 2006	DSL 000113		x		x	x	x	
6	5	US Bank Deposit Ticket to Defendant 2's US Bank Account *6777, dated March 5, 2008	USB 002300							x
7	6	Check No. 81012015 for \$15.34 from MetLife payable to Defendant 1, dated January 9, 2008	USB 002301					x	x	
8	7	Check No. 520843 for \$1,504.97 from MetLife payable to Defendant 1, dated February 25, 2008	USB 002302					x	x	
9	8	Check No. 79233041 for \$19.24 from MetLife payable to Defendant 1, dated November 6, 2007	USB 002303		x	x	x	x	x	
10	9	US Bank Deposit Ticket to Defendant 2's US Bank Account *6777, dated August 22, 2008	USB 003011							x
11	10	Check for \$600.00 from United States Treasury to Defendant 1, dated August 15, 2008	USB 003012		x	x	x	x	x	
12	11	Check for \$230.80 from United States Treasury to Defendant 1, dated August 15, 2008	USB 003013				x	x	x	
13	12	US Bank Deposit Ticket to Defendant 2's US Bank Account *6777, dated January 9, 2009	USB 003070						x	x
14	13	US Bank Cash Out Ticket Credit for \$400	USB 003071						x	
15	14	Check No. 024 for \$30.00 from United States Treasury payable to Defendant 2, dated November 21, 2008	USB 003072							x

Depending on the case, you may also want to include a brief description of the document for context. For example, identifying the date, time, or other descriptive information may assist in more quickly accessing documents. You will be able to search for these terms in Excel. Columns can also be created to identify an exhibit's relevance to a particular count, codefendant, or event.

Excel features a simple process for hyperlinking documents into the spreadsheet. The important first step is to copy the spreadsheet and all the documents to a single location such as a folder on your computer, a thumb drive, or an external hard drive. This is necessary to maintain the hyperlinks' functionality. You may find it helpful to name the exhibits with either a descriptive title (for example, *Wire Transfer Form*) or by exhibit number. The sample below has the documents named by exhibit.

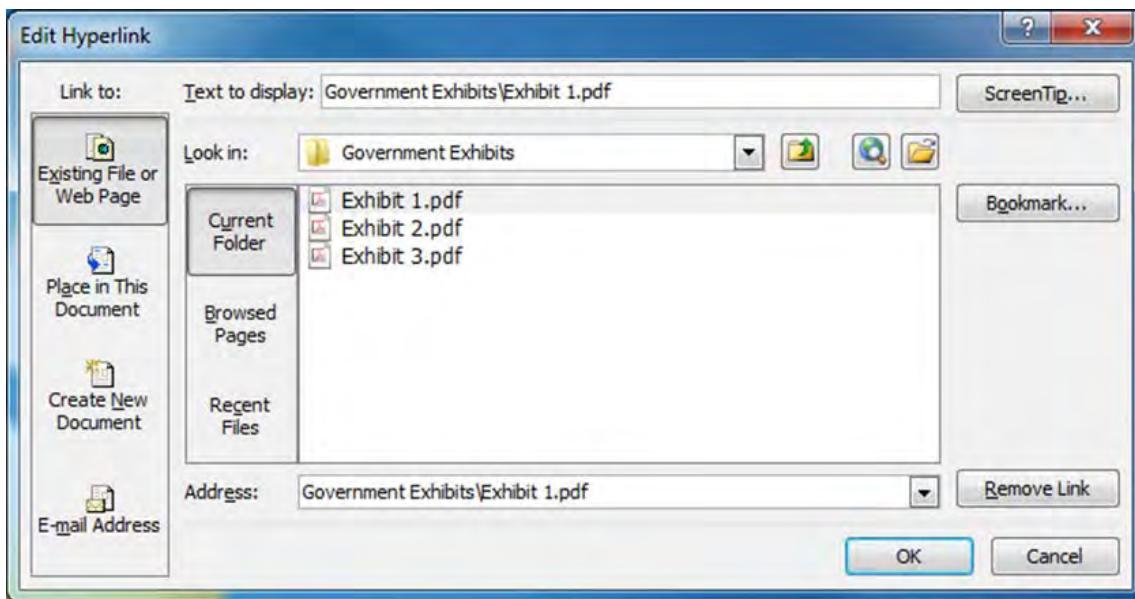
Click on the box in the *Hyperlink* column where you want to insert the document. Then select the *Insert* tab at the top of the screen (for Mac users, this will be a menu item at the top of your screen).

Figure 3-2: Hyperlinking to Exhibit PDFs



Next choose *Hyperlink*. A dialogue box will prompt you to select the document you would like to hyperlink. Select the exhibit you wish to insert, then click *OK*.

Figure 3-3: Hyperlink 3-3: Selecting Exhibit PDF



This will insert a hyperlink into the cell you selected. Repeat this process for the remaining cells.

Figure 3-4: Hyperlinked Exhibit List

Exhibit	Document	Bates	Hyperlink	Count 1	Count 2	Count 3	Count 4	Defendant 1	Defendant 2
1	Purchase & Sale Agreement (Dec. 5, 2008)	AB1360	Government Exhibits/Exhibit 1.pdf	x				x	
2	Wire Transfer Form (Jan. 3, 2009)	WF0135	Government Exhibits/Exhibit 2.pdf	x				x	
3	Handwritten note from Bus. Assoc. No. 3	SW0506	Government Exhibits/Exhibit 3.pdf		x	x		x	
4	Check No. 14422 Payable from RV Wholesalers to Defendant 1, dated October 19, 2008	DSL 000113	Government Exhibits/Exhibit 4.pdf	x		x	x	x	
5	US Bank Deposit Ticket to Defendant 2's US Bank Account *6777, dated March 5, 2008	USB 002300	Government Exhibits/Exhibit 5.pdf						x
6	Check No. 81012015 for \$15.34 from MetLife payable to Defendant 1, dated January 9, 2008	USB 002301	Government Exhibits/Exhibit 6.pdf				x	x	
7	Check No. 520843 for \$1,504.97 from MetLife payable to Defendant 1, dated February 25, 2008	USB 002302	Government Exhibits/Exhibit 7.pdf				x	x	
8	Check No. 79233041 for \$19.24 from MetLife payable to Defendant 1, dated November 6, 2007	USB 002303	Government Exhibits/Exhibit 8.pdf	x	x	x	x	x	
9	US Bank Deposit Ticket to Defendant 2's US Bank Account *6777, dated August 22, 2008	USB 003011	Government Exhibits/Exhibit 9.pdf						x
10	Check for \$600.00 from United States Treasury to Defendant 1, dated August 15, 2008	USB 003012	Government Exhibits/Exhibit 10.pdf	x	x	x	x	x	
11	Check for \$230.80 from United States Treasury to Defendant 1, dated August 15, 2008	USB 003013	Government Exhibits/Exhibit 11.pdf			x	x	x	
12	US Bank Deposit Ticket to Defendant 2's US Bank Account *6777, dated January 9, 2009	USB 003070	Government Exhibits/Exhibit 12.pdf					x	x
13	US Bank Cash Out Ticket Credit for \$400	USB 003071	Government Exhibits/Exhibit 13.pdf					x	
14	Check No. 024 for \$30.00 from United States Treasury payable to Defendant 2, dated November 21, 2008	USB 003072	Government Exhibits/Exhibit 14.pdf						x

You can also search and filter information in the spreadsheet, including the document title. Searching by document title will help locate a document quickly without reviewing all the documents. Select the arrow at the top of the column and type the desired term into the search box. For example, to locate all of the exhibits relating to a bank account ending in 6777, enter that number into the search field. Press OK and the documents will be narrowed to those containing "6777" in the title.

Figure 3-5: Exhibit Search by Document

Exhibit	Document	Bates	Hyperlink	Count 1	Count 2	Count 3	Count 4	De
1	Purchase & Sale Agreement (Dec. 5, 2008)	AB1360	Government Exhibits/Exhibit 1.pdf	x				x
2	Wire Transfer Form (Jan. 3, 2009)	WF0135	Government Exhibits/Exhibit 1.pdf	x				x
3	Handwritten note from Bus. Assoc. No. 3	SW0506	Government Exhibits/Exhibit 1.pdf		x	x		x
4	Check No. 14422 Payable from RV Wholesalers to Defendant 1, dated October 19, 2008	DSL 000113	Government Exhibits/Exhibit 1.pdf	x			x	x
5	US Bank Deposit Ticket to Defendant 2's US Bank Account *6777, dated March 5, 2008	USB 002300	Government Exhibits/Exhibit 1.pdf					
6	Check No. 81012015 for \$15.34 from MetLife payable to Defendant 1, dated January 9, 2008	USB 002301	Government Exhibits/Exhibit 1.pdf					x
7	Check No. 520843 for \$1,504.97 from MetLife payable to Defendant 1, dated February 25, 2008	USB 002302	Government Exhibits/Exhibit 1.pdf					x
8	Check No. 79233041 for \$19.24 from MetLife payable to Defendant 1, dated November 6, 2007	USB 002303	Government Exhibits/Exhibit 1.pdf	x	x	x	x	x
9	US Bank Deposit Ticket to Defendant 2's US Bank Account *6777, dated August 22, 2008	USB 003011						

Rather than reviewing the entire exhibit list or looking through each of the exhibits, this feature allows you to quickly identify relevant exhibits. This can be especially useful at trial, when (for example) unexpected testimony leaves you scrambling to find a half-remembered document for cross-examination.

Figure 3-6: Exhibit Search by Document Results

Exhibit	Document	Bates	Hyperlink	Count 1	Count 2	Count 3	Count 4	De
5	US Bank Deposit Ticket to Defendant 2's US Bank Account *6777, dated March 5, 2008	USB 002300	Government Exhibits/Exhibit 1.pdf					
9	US Bank Deposit Ticket to Defendant 2's US Bank Account *6777, dated August 22, 2008	USB 003011	Government Exhibits/Exhibit 1.pdf					
12	US Bank Deposit Ticket to Defendant 2's US Bank Account *6777, dated January 9, 2009	USB 003070	Government Exhibits/Exhibit 1.pdf					X

You can also use the filter function to isolate documents relevant to a specific count, codefendant, or other column. In Figure 3-7, the exhibits have been filtered to only those relevant to Defendant 2.

Figure 3-7: Exhibit Filter by Defendant

Exhibit	Document	Bates	Hyperlink	Count 1	Count 2	Count 3	Count 4	Defendant 1	Defendant 2
5	US Bank Deposit Ticket to Defendant 2's US Bank Account *6777, dated March 5, 2008	USB 002300	Government Exhibits/Exhibit 1.pdf						X
9	US Bank Deposit Ticket to Defendant 2's US Bank Account *6777, dated August 22, 2008	USB 003011	Government Exhibits/Exhibit 1.pdf						X
12	US Bank Deposit Ticket to Defendant 2's US Bank Account *6777, dated January 9, 2009	USB 003070	Government Exhibits/Exhibit 1.pdf				X		X
14	Check No. 024 for \$30.00 from United States Treasury payable to Defendant 2, dated November 21, 2008	USB 003072	Government Exhibits/Exhibit 1.pdf						X

Sentencing Comparison

A valuable tool when preparing for the sentencing of a client is a spreadsheet comparing the sentences and facts of other defendants convicted of similar crimes. This can aid both in determining what an appropriate recommendation is for a client, and also in distinguishing the facts justifying the imposition of particularly high sentences in other cases. The columns you choose for your spreadsheet will vary depending on the nature of the offense, defendant, and information you find important. For example, the name of the U.S. Attorney and their sentencing recommendation may be useful if you are trying to foresee what sentence they might recommend. The name of the judge may be useful to determine if there is a pattern for sentencing certain types of crimes. If your client is very young or elderly, it may be helpful to know the age of other defendants who have been sentenced to see if age appears to be a factor. Below is an example of potential categories for a sentencing comparison chart.

Figure 4-1: Example Sentencing Comparison Spreadsheet

	A	B	C	D	E	F	G	H	I
1	First	Last	Case	Plea Date	Loss	Sentence	Issues	AUSAs	Judge
2									
3									
4									
5									

Next, find the information for the spreadsheet. Though the U.S. Sentencing Commission offers a useful online compendium of sentencing statistics,² a useful place to begin collecting facts about specific cases is your local U.S. Attorney's own press releases.

To begin, find the webpage for the U.S. Attorney's Office for your district. The Department of Justice has online listings for U.S. Attorneys;³ each page has a link to that U.S. Attorney's Office's website. Individual USAO websites will likely have a header similar to the sample below.⁴

Figure 4-2: USAO Webpage Tabs



² U.S. Sentencing Comm'n, INTERACTIVE SOURCEBOOK, <http://isb.ussc.gov/USSC> (visited Mar. 11, 2014).

³ U.S. Dep't of Justice, OFFICES OF THE UNITED STATES ATTORNEYS, <http://www.justice.gov/usao/about/usattorneys.html> (visited Mar. 11, 2014).

⁴ All examples in this section taken from the website of the U.S. Attorney for the Western District of Washington, <http://www.justice.gov/usao/waw/> (visited Mar. 14, 2014).

Select *News*. This will bring up the *News And Press Releases* page. Some jurisdictions will provide subjects tags, as in Figure 4-3, so you can quickly identify articles regarding defendants who have been similarly charged and/or convicted.

Figure 4-3: USAO Press Release Subject Tags

NEWS


News And Press Releases

2014: [Jan](#) | [Feb](#) | [Mar](#) | [Apr](#) | [May](#) | [Jun](#) | [Jul](#) | [Aug](#) | [Sep](#) | [Oct](#) | [Nov](#) | [Dec](#) |

Archives: [2013](#) | [2012](#) | [2011](#) | [2010](#) | [2009](#) | [2008](#) | [2007](#) | [2006](#) | [2005](#)

Subject: [Affirmative Civil Enforcement](#) | [Arson](#) | [Bank Fraud](#) | [Bank Robbery](#) | [Child Pornography](#) | [Civil Rights](#) | [Computer Crime and Internet Fraud](#) | [Corporate and Investment Fraud](#) | [Crimes on Indian Lands](#) | [Drug Crimes](#) | [Environmental Crimes](#) | [Guns and Explosives](#) | [Hate Crimes](#) | [Healthcare Fraud](#) | [Human Trafficking](#) | [Identity Theft](#) | [Immigration and Alien Smuggling](#) | [International Cases](#) | [Miscellaneous](#) | [Money Laundering](#) | [Mortgage Fraud](#) | [Public Corruption](#) | [Sex Crimes](#) | [Tax Crimes](#) | [Terrorism](#) | [Theft and Embezzlement](#) | [U.S. Attorney's Office News](#) | [Violent Crimes](#)

Others may only have the headings of the most recent news releases.

Figure 4-4: USAO News Items

NEWS


News And Press Releases

2014: [Jan](#) | [Feb](#) | [Mar](#) | [Apr](#) | [May](#) | [Jun](#) | [Jul](#) | [Aug](#) | [Sep](#) | [Oct](#) | [Nov](#) | [Dec](#)

Archives: [2013](#) | [2012](#) | [2011](#) | [2010](#) | [2009](#) | [2008](#) | [2007](#) | [2006](#) | [2005](#) | [2004](#) | [2003](#) | [2002](#)

February 2014

February 12, 2014

[Man Pleads Guilty To Swindling Millions From Investors In Golf Course Scheme](#)

Either way, there should be a search box in the top right hand corner of the screen. If you cannot browse the press releases by subject matter, you can search for similar crimes. Below, the term “counterfeit” was used to find similarly convicted defendants.

Figure 4-5: USAO Website Search Tool

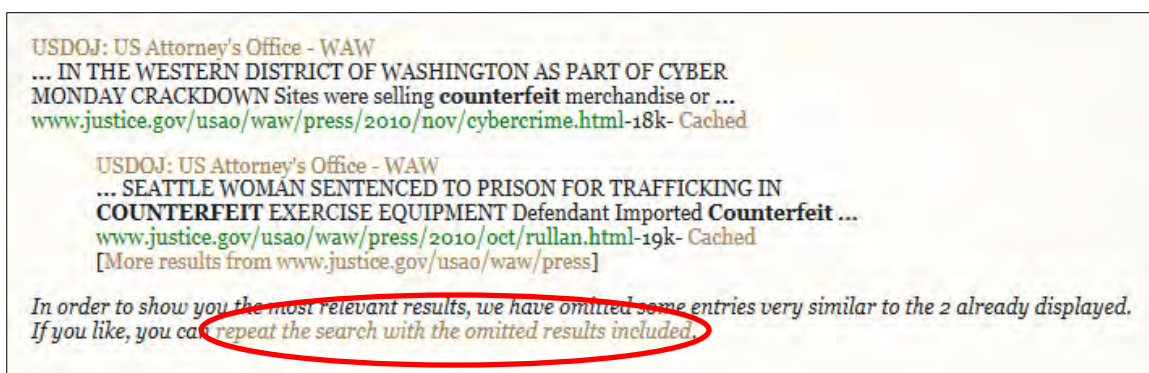


SEARCH THE SITE

counterfeit x SEARCH

In this instance, only two results were returned at first, because the search had automatically filtered out similar results. However, because U.S. Attorney press releases are often repetitive, this filtering may hide useful results from different cases. If you do not have enough results returned, then you should opt to repeat the search. Using this option resulted in an additional 81 results.

Figure 4-5: USAO Website Search Including Omitted Results



USDOJ: US Attorney's Office - WAW
... IN THE WESTERN DISTRICT OF WASHINGTON AS PART OF CYBER
MONDAY CRACKDOWN Sites were selling **counterfeit** merchandise or ...
www.justice.gov/usao/waw/press/2010/nov/cybercrime.html-18k- Cached

USDOJ: US Attorney's Office - WAW
... SEATTLE WOMAN SENTENCED TO PRISON FOR TRAFFICKING IN
COUNTERFEIT EXERCISE EQUIPMENT Defendant Imported **Counterfeit** ...
www.justice.gov/usao/waw/press/2010/oct/rullan.html-19k- Cached
[More results from www.justice.gov/usao/waw/press]

*In order to show you the most relevant results, we have omitted some entries very similar to the 2 already displayed.
If you like, you can repeat the search with the omitted results included.*

Select cases that may be relevant. A new page will display containing a news release. These releases vary from perfunctory to thorough. Often most of the information you need will be found in the first paragraph.

Figure 4-5: Example USAO Press Release

GENEVIEVE RULLAN, 34, of Seattle, Washington was sentenced today in U.S. District Court in Seattle to 30 days in prison, 120 days of home confinement, 150 hours of community service, three years of supervised release and \$64,500 in restitution for Trafficking in Counterfeit Goods. RULLAN pleaded guilty in June 2010, following an undercover investigation by U.S. Immigration and Customs Enforcement Homeland Security Investigations (HSI). RULLAN admitted she knowingly imported and sold counterfeit exercise equipment. In sentencing RULLAN to prison time, U.S. District Judge Ricardo S. Martinez noted that “there were many, many false statements to customs and to customers . . . there were many overt acts to keep this scheme going.”

This information can be readily copied and pasted into your spreadsheet.

Figure 4-6: Sentencing Comparison Spreadsheet with USAO Information

	A	B	C	D	E	F	G	H	I	J
	First	Last	Case	Plea Date	Loss	Age	Sentence	Issues	AUSAs	Judge
1	Genevieve	Rullan	Trafficking in Counterfeit Goods	6/1/2010	\$64,500	34	30 days in prison, 120 days of home confinement, 150 hours of community service, three years of supervised release	imported and sold counterfeit exercise equipment	Matthew Diggs	Martinez
2										

An all-purpose column such as *Issues* may be helpful to limit the number of columns.

Figure 4-7: Issues Column

	A	B	C	D	E	F	G	H	I	J
	First	Last	Case	Plea Date	Loss	Age	Sentence	Issues	AUSAs	Judge
1	GENEVIEVE	RULLAN	Trafficking in Counterfeit Goods	6/1/2010	\$64,500	34	30 days in prison, 120 days of home confinement, 150 hours of community service, three years of supervised release	imported and sold counterfeit exercise equipment	Matthew Diggs	Martinez
2	WAYNE	CHIH-WEI SHU	Mail Fraud, Trafficking in Counterfeit Goods, Trafficking in Illicit Labels, and two counts of wilful failure to file tax returns	1/13/2011	\$687,633	44	Mail Fraud, Trafficking in Counterfeit Goods, Trafficking in Illicit Labels, and two counts of wilful failure to file tax returns	scheme to profit from selling counterfeit Microsoft software	Kathryn Warma, Norman Barbosa	Settle
3	VITALIY	YAREMKIV	conspiracy to traffic in counterfeit goods	5/1/2013	137,243	25	6 months in prison	sold approximately 960 counterfeit vehicle airbags	Norman Barbosa	Leighton
4	JAMES PETER	ARMSTRONG	selling and dispensing counterfeit drugs with the intent to mislead or defraud	10/21/2010		59	\$30,000 fine and one year of supervised release during which he must perform 75 hours of community service	counterfeit erectile dysfunction drug Viagra and 260 pills of Cialis; member of Canadian paraolympic curling team; retired dentist	Patricia Lally	Martinez

In this example, the spreadsheet only contains information gleaned from U.S. Attorney press releases. This should be enough to get a sense of each case's facts, but it is framed from DOJ's perspective. For a fuller—and less slanted—version of facts in cases that seem especially relevant to your own, retrieve defense and government sentencing memoranda from PACER. Additionally, you will likely need to review the sentencing memoranda (or, in some districts, the docket) to learn what offense level and criminal history category each sentencing court used to calculate the advisory sentencing range. These details, if retrieved, warrant their own columns on your spreadsheet.

As with prior examples, the sentencing comparison spreadsheet can be sorted, filtered, and searched. You may want to sort the spreadsheet by plea date to see if there have been any changes in sentencing trends.

Figure 4-8: Sorting by Plea Date

	A	B	C	D	E	F	G	H	I
	First	Last	Case	Plea Date	Loss	Age	Sentence	Issues	
1	GENEVIEVE	RULLAN	Tr		\$64,500	34	30 days in prison, 120 days of home confinement, 150 hours of community service, three years of supervised release	imported and sold counterfeit exercise equipment	Matti
2	WAYNE	CHIH-WEI SHU	Me		\$687,633	44	Mail Fraud, Trafficking in Counterfeit Goods, Trafficking in Illicit Labels, and two counts of wilful failure to file tax returns	scheme to profit from selling counterfeit Microsoft software	Kath Warr Norm Barb
3	VITALIJ	YAREMKIV	co		137,243	25	6 months in prison	sold approximately 960 counterfeit vehicle airbags	Norm Barb
4	JAMES PETER	ARMSTRONG	se			59	\$30,000 fine and one year of supervised release during which he	counterfeit erectile dysfunction drug Viagra and 260 pills of Cialis; member of Canadian	Patri

Limiting the results to sentences with prison sentences can be done by searching for “prison” in the filtering function.

Figure 4-9: Filtering for Sentences of Imprisonment

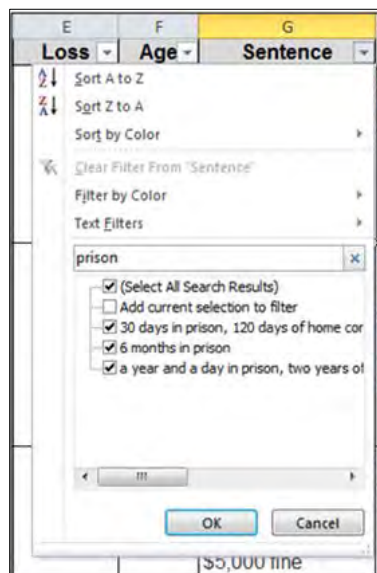


Figure 4-10: Results of Filtering by “Prison”

[illegible]

PowerPoint Presentation

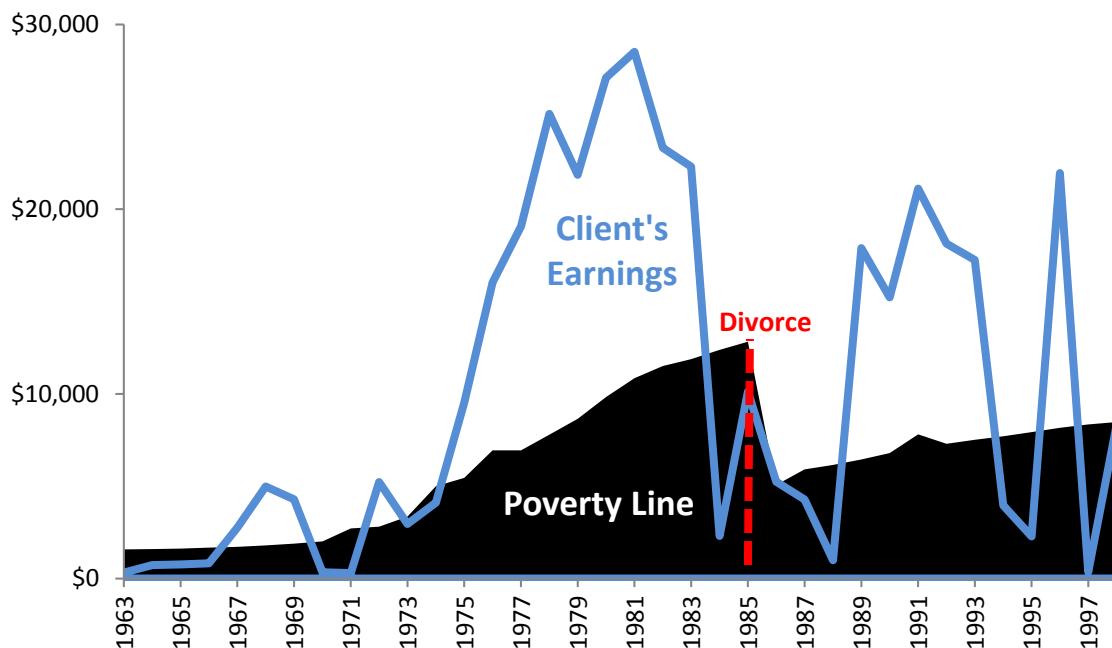
Turning to another ubiquitous Microsoft program, PowerPoint is useful for presenting visual information—a compelling and indispensable tool for advocacy. Excel complements PowerPoint: the information in an Excel document can quickly be turned into graphs and charts then exported into PowerPoint to tell a powerful story with data.

What story to tell depends on the case and what you want to advocate on behalf of your client. For illustration and inspiration, consider these two examples.

Example 1: Your client has suffered from bipolar disorder all her life, struggling through severe cycles of mania and depression. You need the jury to understand how disruptive and chaotic these swings have been for your client. One aspect of her life which demonstrates her mental illness is her ability to earn money: during manic episodes she works several jobs at the same time; during periods of depression she works little or not at all. These economic fluctuations bounce her above and below the poverty line over and again; and sketch a shorthand account of your client's struggles with mental illness.

Figure 5-1 shows a chart of your client's historical earning year-by-year plotted against the U.S. poverty line. The chart also discloses another wound inflicted by mental illness—in 1985 the poverty line applicable to your client changes from that of a family of four to the level for a single individual, after a divorce and loss of custody over her two children.

Figure 5-1: Chart of Client's Earnings and the Poverty Line

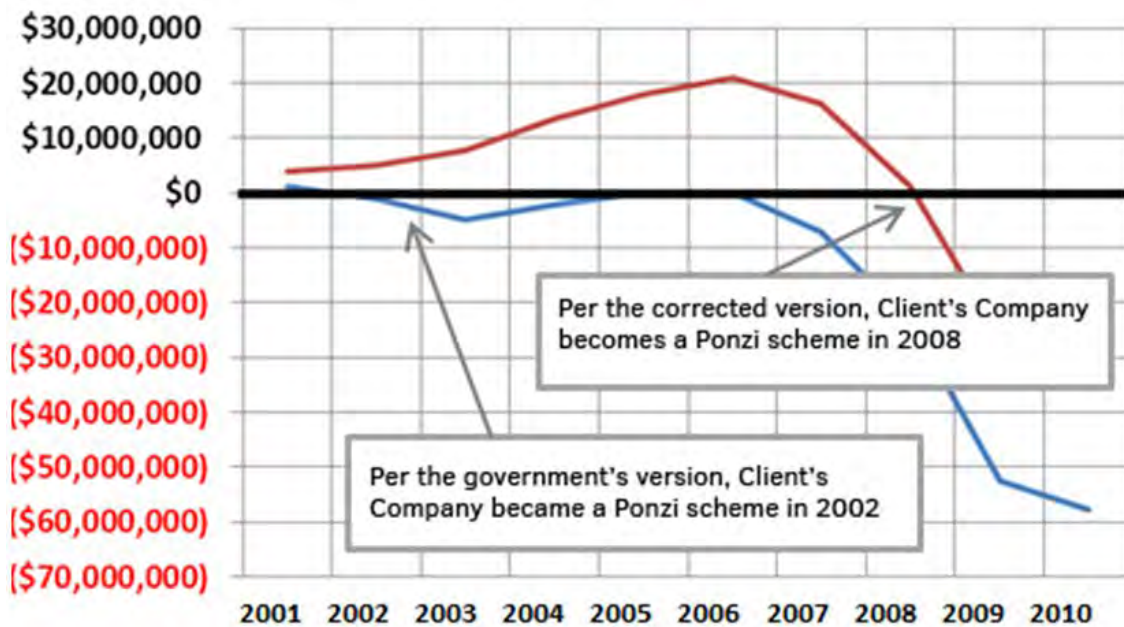


Example 2: The government has accused your client of defrauding investors in what it characterizes as a Ponzi scheme, and your client has accepted a hard-won plea deal in the face of overwhelming evidence. The government's calculations make it look as if your client began losing money in 2002, meaning that all repayments made to investors after that date were made with newer investor's funds. However, with the help of a

forensic accountant you have corrected the government's calculations and can demonstrate your client's business operated in the black through 2008. You want to show the sentencing judge that your client's business began as a sound venture, and continued as such until near the end.

Figure 5-2 shows a chart of your (corrected) calculations plotted against the government's numbers.

Figure 5-2: Client's Principal and Interest Collected versus Paid Out



Both example charts were created in Excel, and use different formatting to help convey their respective messages. Walking through the steps involved in creating the first chart will serve as a primer on creating and tailoring a chart. Adapt the process to tell your client's story.

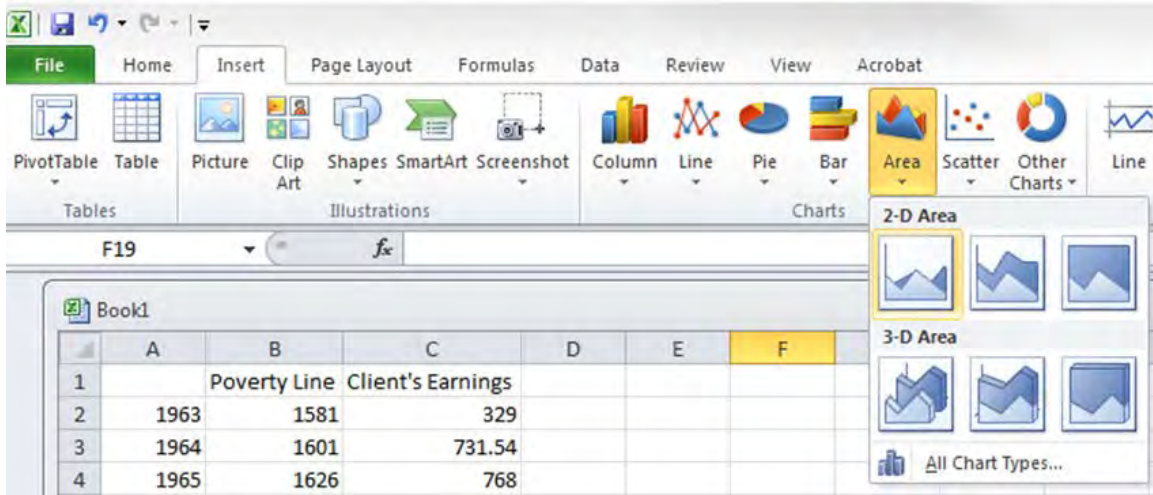
Figure 5-1 started as a simple Excel document with three columns of data:

Figure 5-3: Economic Data in Excel

	A	B	C	D
1		Poverty Line	Client's Earnings	
2	1963	1581	329	
3	1964	1601	731.54	
4	1965	1626	768	
5	1966	1674	826.1	
6	1967	1722	2763	
7	1968	1797	4984.17	
8	1969	1893	4290	
9	1970	2010	342	
10	1971	2716	297	
11	1972	2808	5224.83	
12	1973	3356	2958.64	
13	1974	5000	4107.45	

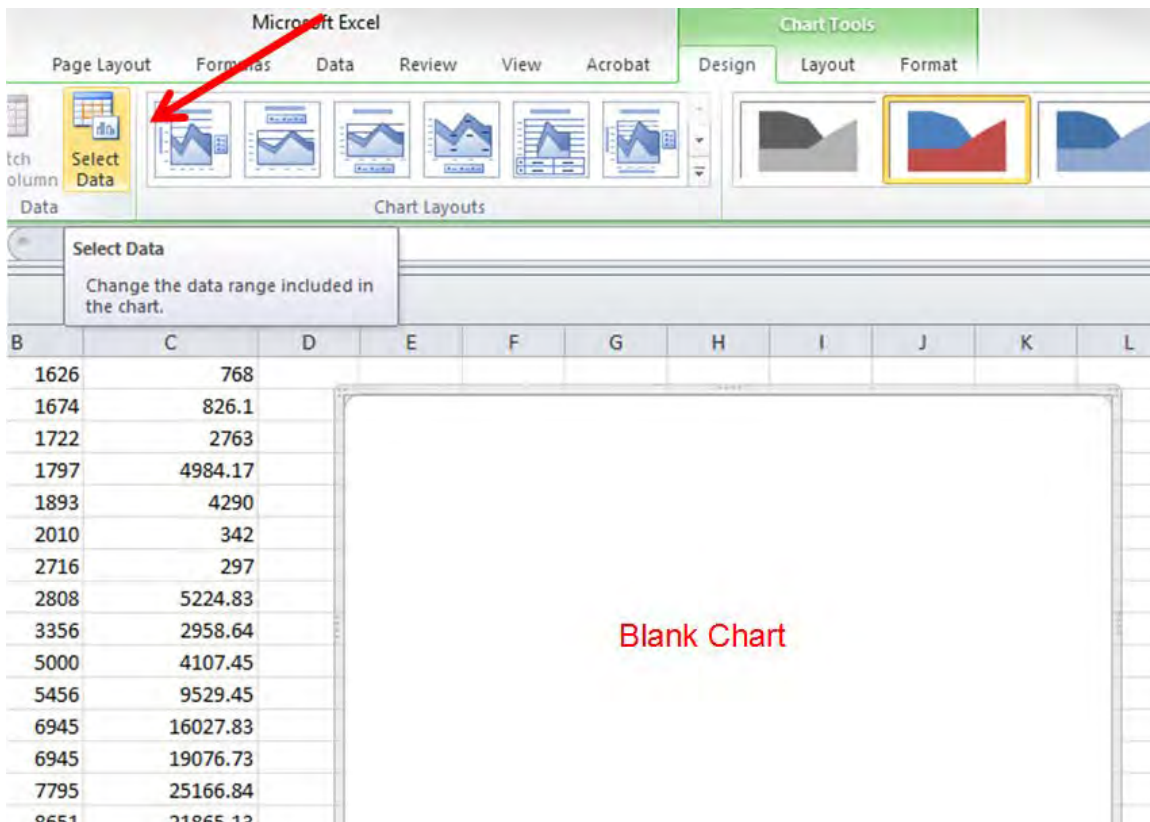
Create a chart by selecting a chart type from the *Insert* tab. The example uses an area chart (instead of a line chart) to emphasize the dark expanse below the poverty line with an all-black fill.

Figure 5-4: Selecting Chart Type



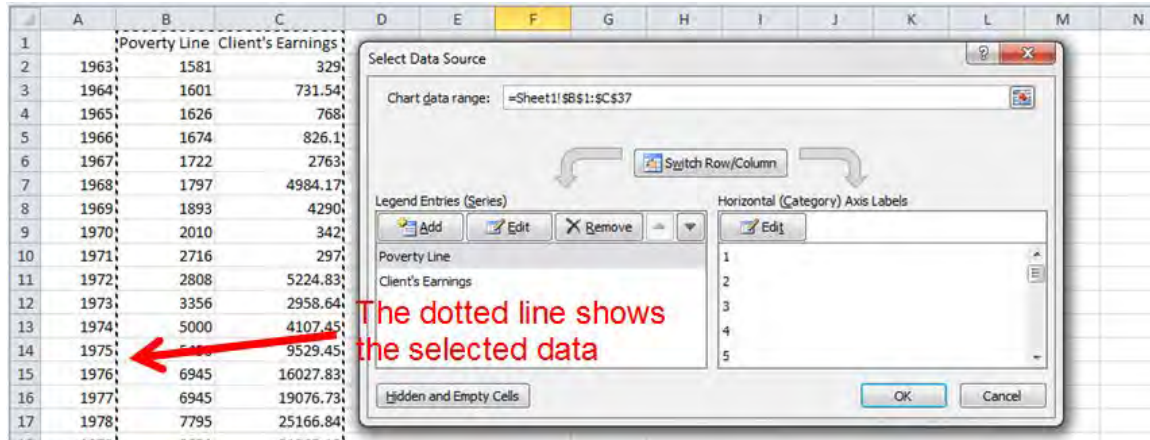
This creates a blank chart in your document, and a new set of menu tabs, *Design*, *Layout*, and *Format*, collectively under the heading *Chart Tools*. Click the *Select Data* button under the *Design* tab.

Figure 5-5: Blank Chart and Chart Tools Tab



This opens a dialogue box prompting you to select a data range for your chart. Click and drag to select the cells with data you want to display. Here, that is the *Poverty Line* and *Client's Earnings* columns, but not the date range.

Figure 5-6: Selecting Data



Before clicking OK, make sure your data labels are in order. Here, the data series labels have been automatically populated, but the horizontal axis still needs to be labelled by year. Click the *Edit* button under *Horizontal (Category) Axis Labels*, then click-and-drag your cursor over the cells containing years.

Figure 5-7a: Edit Axis Label

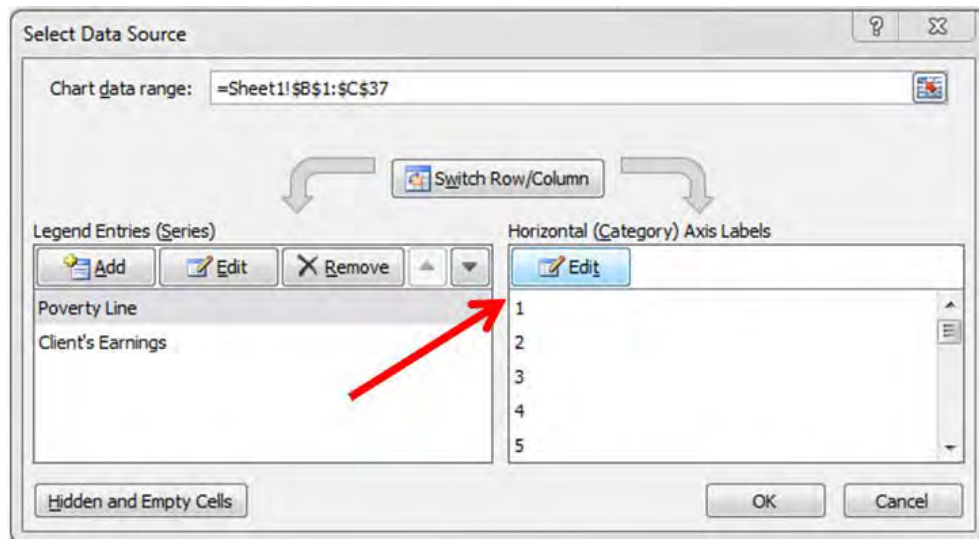
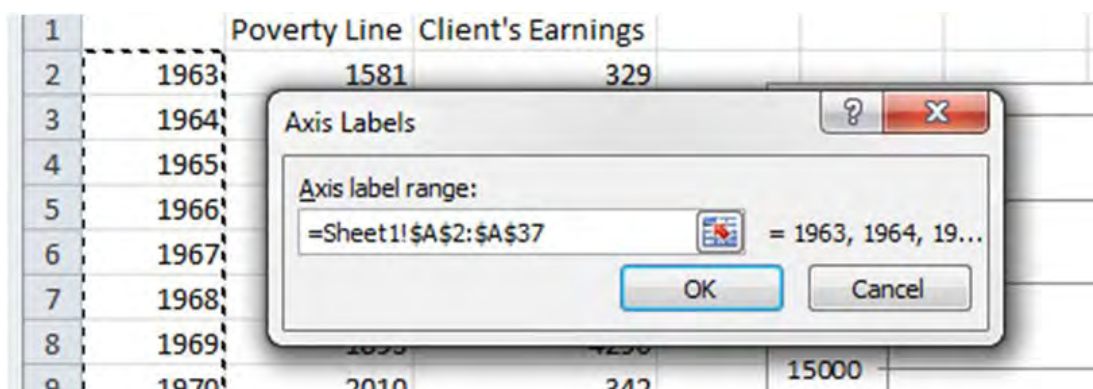
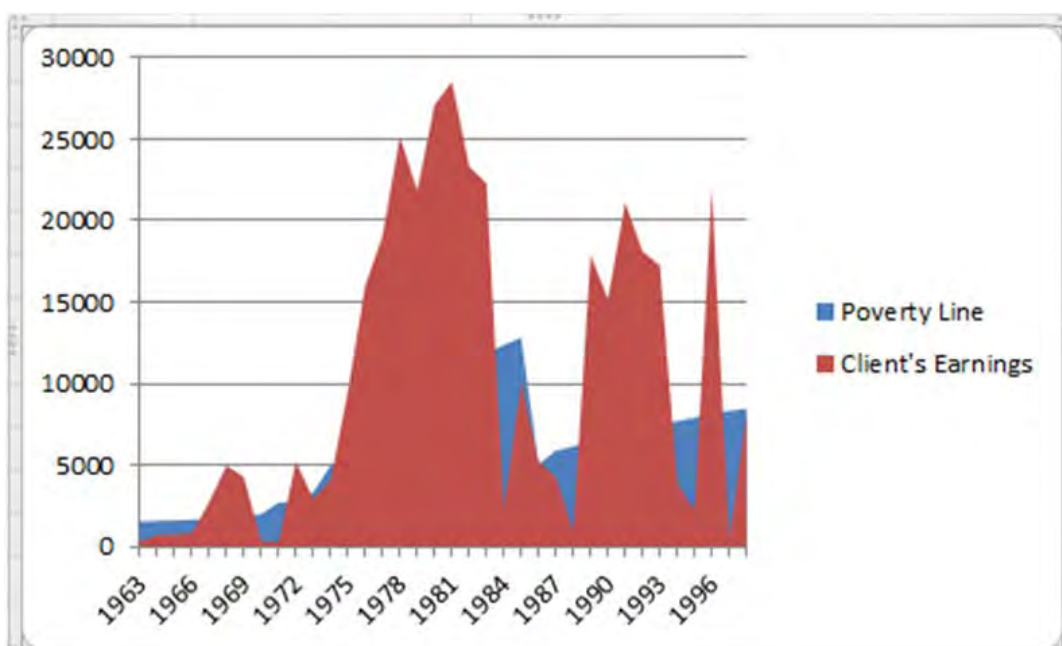


Figure 5-7b: Select Year Data for Axis Label



Click *OK* to close the *Axis Labels* dialogue box, and *OK* again on the *Select Data Source* box. This leaves you with the chart in Figure 5-7.

Figure 5-8: Initial Chart



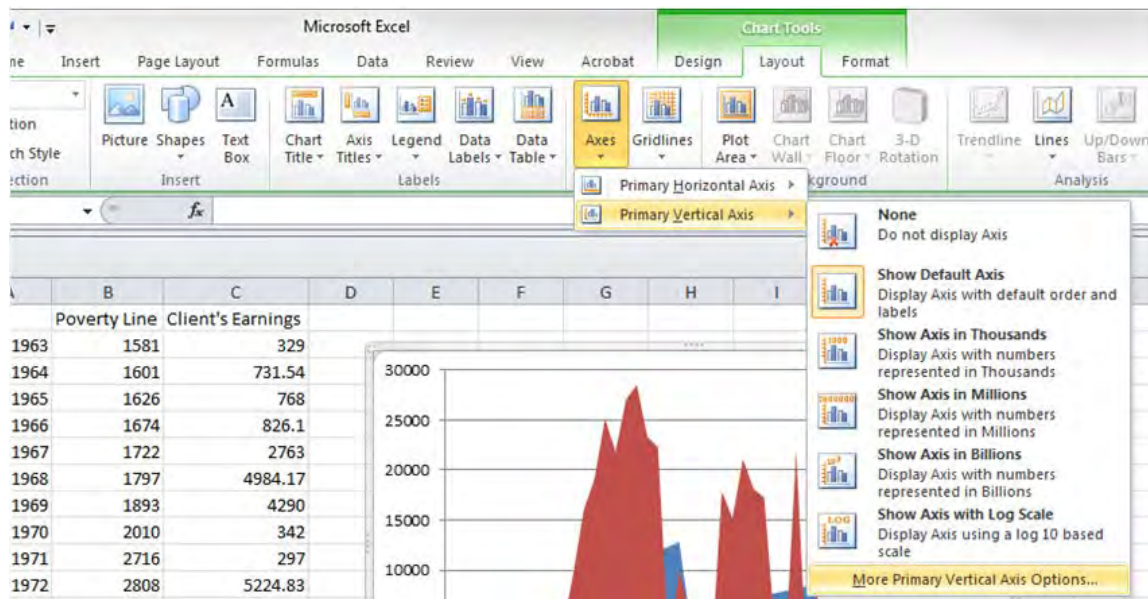
This needs work before it matches the example in Figure 5-1. What follows is a detailed walkthrough of the steps involved in formatting. These steps are polishing the look and feel of your chart, and are not strictly necessary. If you want to use the default chart format, all that's left is to move the chart to PowerPoint—a simple matter of cutting (*Ctrl* and *C*) and pasting (*Ctrl* and *V*). (But if you want to use the default, for this example chart you should probably choose *Line* instead of *Area* when selecting a chart type.)

For those interested in additional ways to display the information, read on.

Because PowerPoint presentations are typically viewed from a distance, making small or dense data difficult to avoid, many of the changes eliminate excess information to make the final chart—and the message you want it to convey—clearer. We'll be changing the format of the vertical axis, the plotted data, the data labels, and adding an additional graphic not contained within the data itself.

First, format the vertical axis. In the *Layout* tab, click the *Axes* button, move your cursor over *Primary Vertical Axis*, then select *More Primary Vertical Axes Options...*

Figure 5-9a: Axis Title Options



This opens the *Format Axis* dialogue box. Under the *Axis Options* tab (highlighted in yellow on the left of the dialogue box), toggle *Major Unit* from *Auto* to *Fixed*, then enter a value of "10000" (the default is 5000 for this data range). This will decrease the amount of text along the left side of the chart by two-thirds.

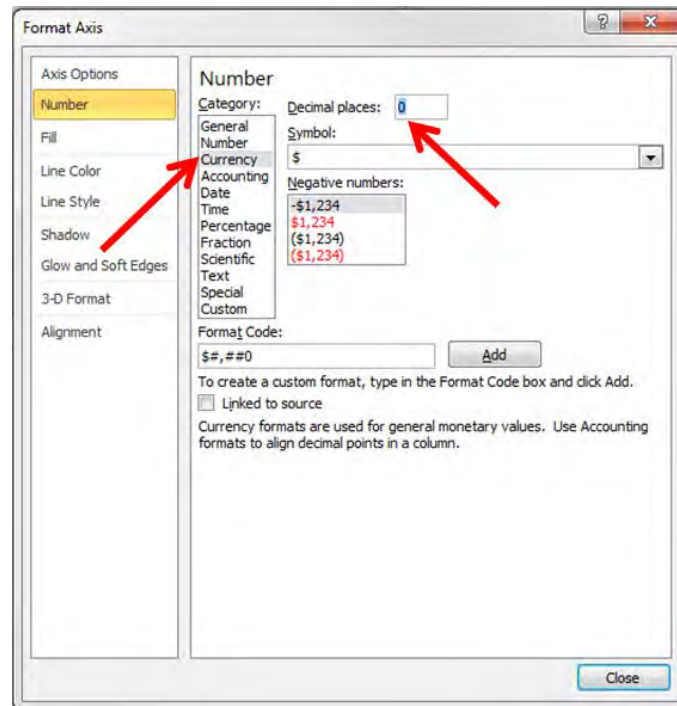
Figure 5-9b: Axis Units

The screenshot shows the 'Format Axis' dialog box with the 'Axis Options' tab selected. The 'Major unit' is set to 'Fixed' with a value of '10000'. A red arrow points to the 'Fixed' radio button for 'Major unit'.

Axis Options	
Minimum:	☒ Auto ☐ Fixed 0.0
Maximum:	☒ Auto ☐ Fixed 30000.0
Major unit:	☐ Auto ☒ Fixed 10000
Minor unit:	☒ Auto ☐ Fixed 1000.0
☐ Values in reverse order	
☐ Logarithmic scale Base: 10	
Display units: None	
☐ Show display units label on chart	
Major tick mark type:	Outside
Minor tick mark type:	None
Axis labels:	Next to Axis
Horizontal axis crosses:	
☒ Automatic	
☐ Axis value: 0.0	
☐ Maximum axis value	

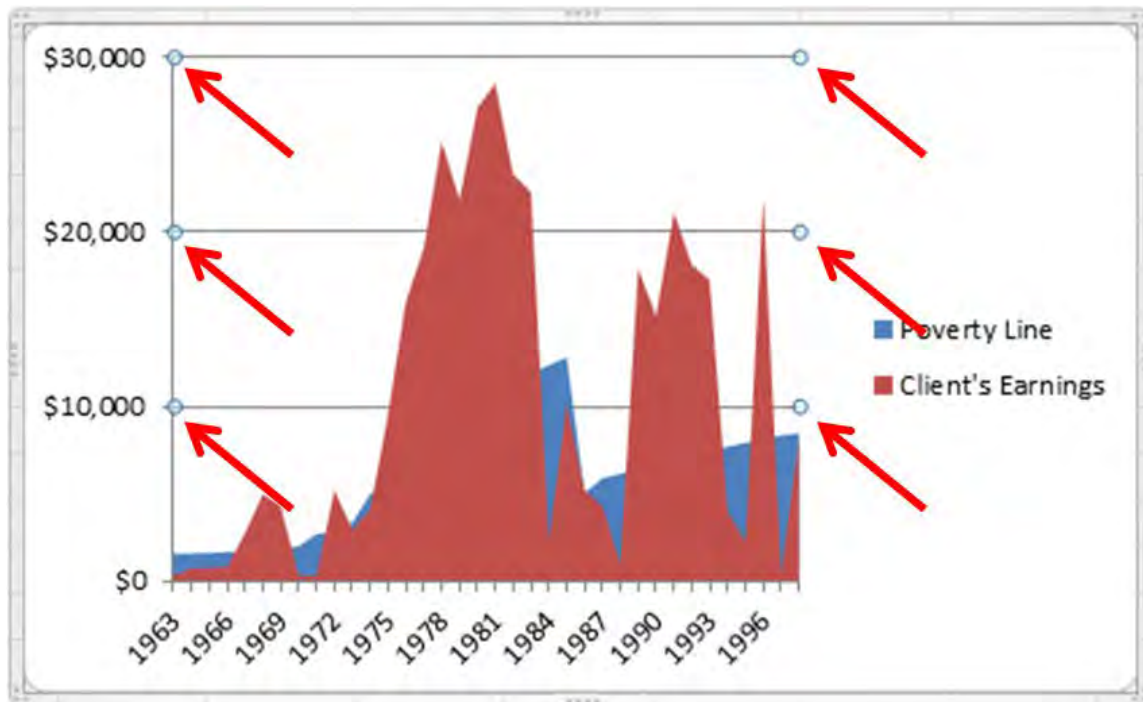
The axis should also make clear that the values it displays are dollars. Under the *Number* tab, select *Currency* from the list of categories. Also set the *Decimal places* value to zero—tabulating loose change would be unnecessary and distracting.

Figure 5-9c: Axis Number Format



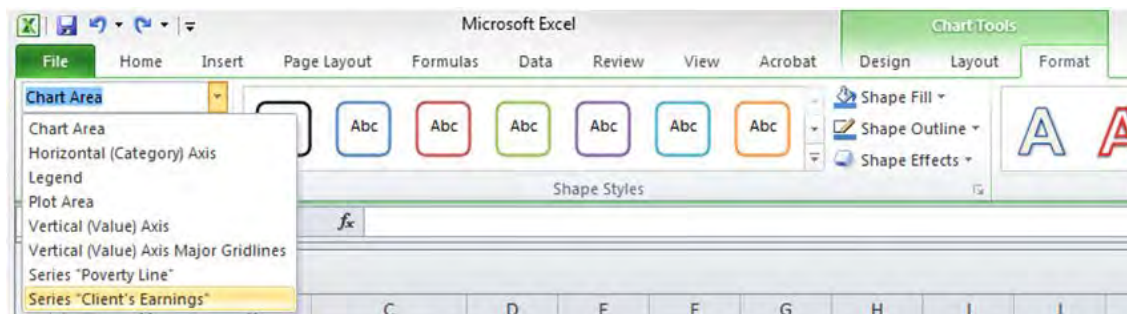
The axis needs no further formatting; click *Close*. However, you may want to eliminate the horizontal lines—matching a point on the poverty line or your client’s earning history is unimportant, and best practice is to cut unneeded data. Carefully click on one of the horizontal lines—small circles will appear at the ends of each line to show they have been selected—then press *Delete*.

Figure 5-10: Chart with Formatted Axis and Horizontal Lines Selected

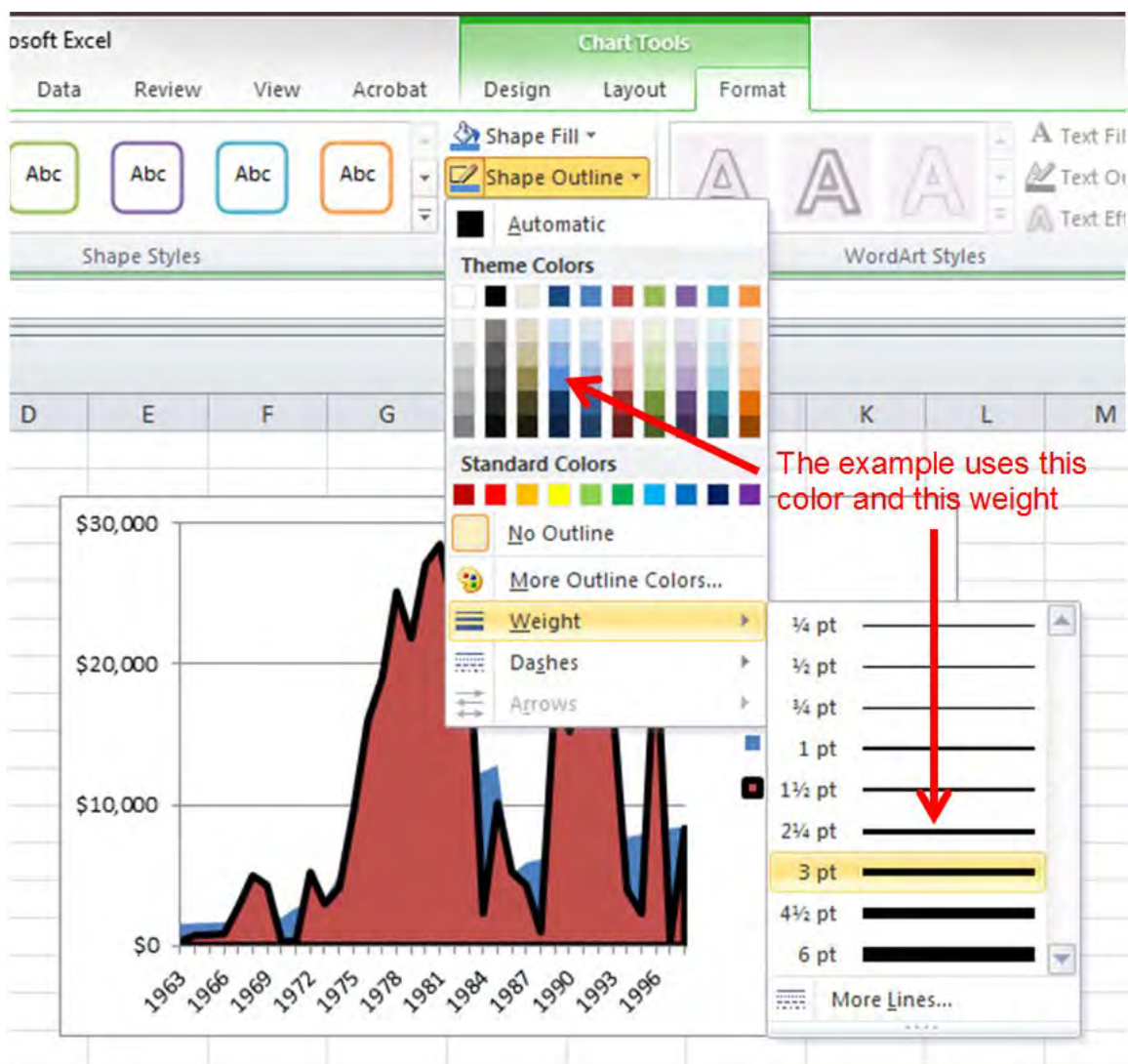


The *Client's Earnings* data also needs to be changed from a red solid to a blue line. Under the *Format* tab, click the *Chart Area* drop-down menu and select Series "Client's Earnings."

Figure 5-11a: Selecting Data Series to Format



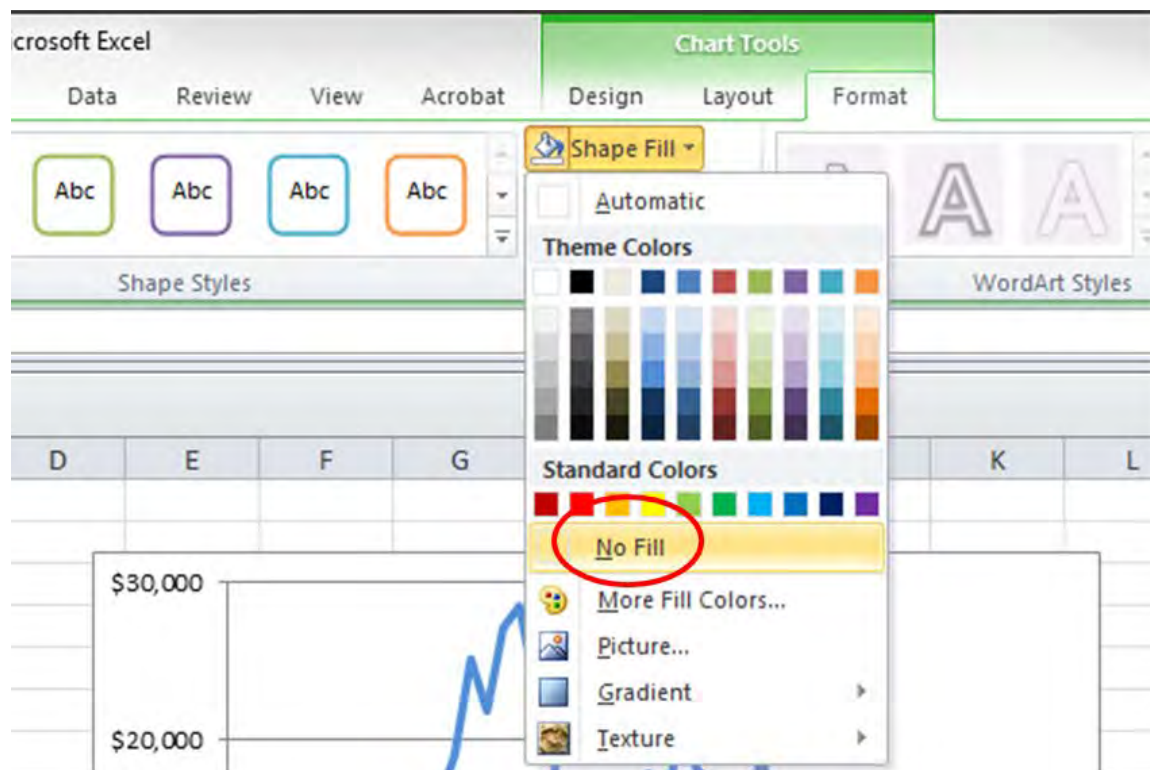
Small circles will appear along the corners of the data to show it has been selected. Still under the *Format* tab, click *Shape Outline*, and select a color for the outline (instead of the default no outline). Here, the example uses a slate blue that will contrast against the eventually black *Poverty Line*.

Figure 5-11b: Changing Selected Data Series' Outline Color and Weight

The default outline is thin and will lack emphasis when displayed in PowerPoint. From the *Shape Outline* menu, select *Weight*, then choose 3 pt.

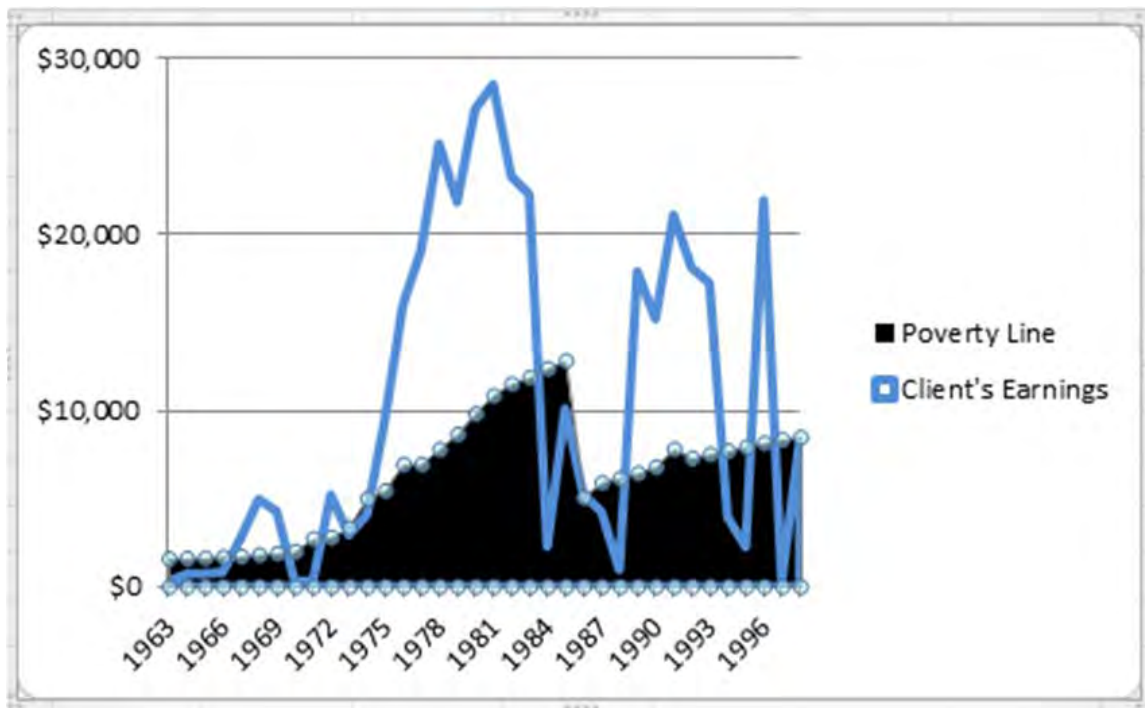
To eliminate the solid red fill, which you will need to do to superimpose *Client Earnings* data over the poverty line, under *Format* click *Shape Fill*. Select *No Fill*.

Figure 5-11c: Changing Selected Data Series' Fill



Reformat the *Poverty Line* data in similar fashion. Under the *Format* tab, choose *Series "Poverty Line"* from the *Chart Area* drip-down menu, then click the *Shape Fill* button, and select a new color—black. This mostly reproduces the chart in Figure 5-11 (note the circles showing that the *Poverty Line* data is still selected):

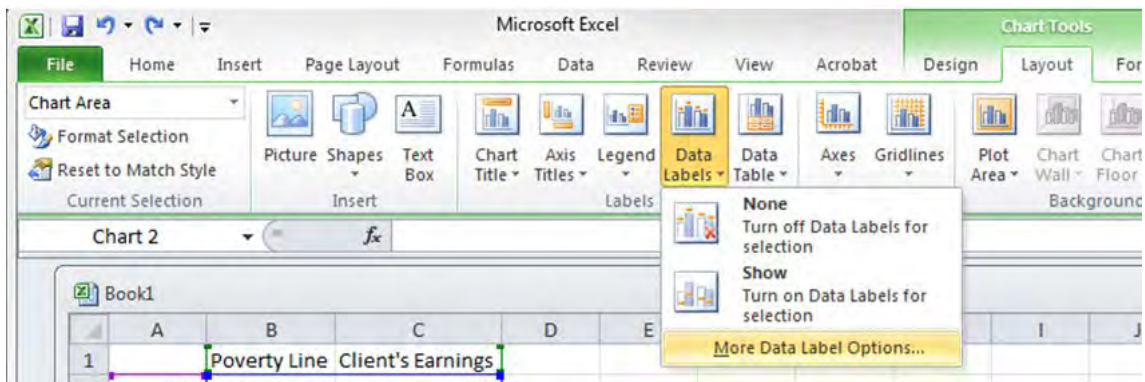
Figure 5-12: Chart with Formatted Data Series



Superimposing the data labels on the data itself gives the chart more breathing room—note how, in Figure 5-11, the legend on the right takes up nearly a third of the visual real-estate. Eliminate the legend. Under the *Format* tab, choose *Legend* from the *Chart Area* drop-down menu, and press *Delete*.

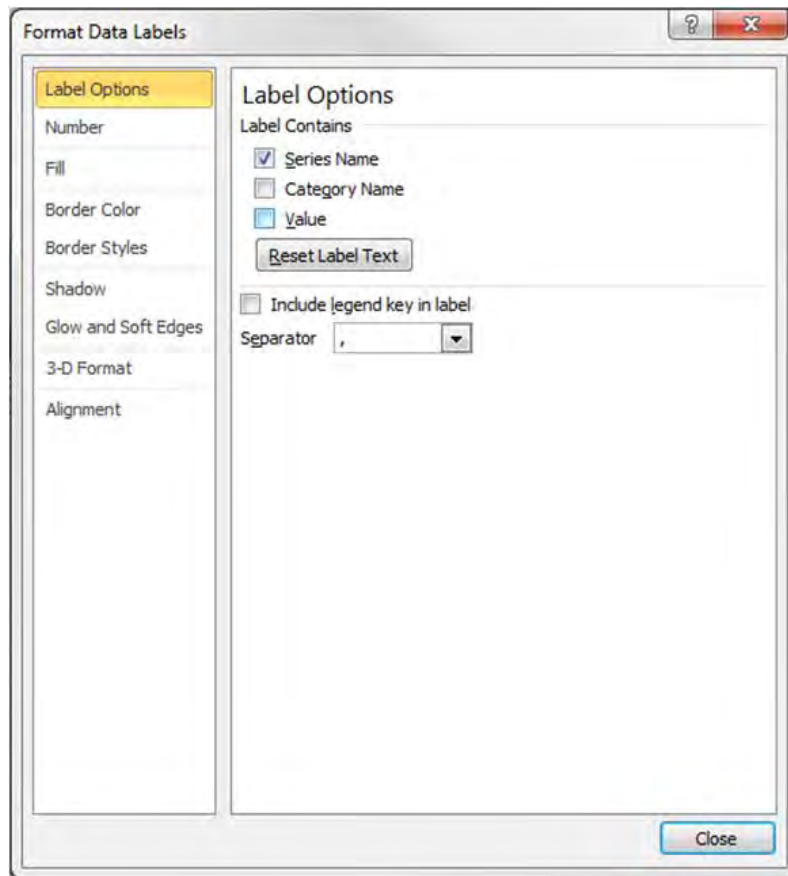
You'll need a new way to let your viewer know what the chart shows: data labels. Format a data label for each series; start with *Client's Earnings*. Under the *Layout* tab (just as under the *Format* tab in the earlier steps), select the data series by clicking the *Chart Area* drop-down menu and choosing *Series "Client Earnings."* Then, click the *Data Labels* button and choose *More Data Labels Options*.

Figure 5-13a: Data Label Options



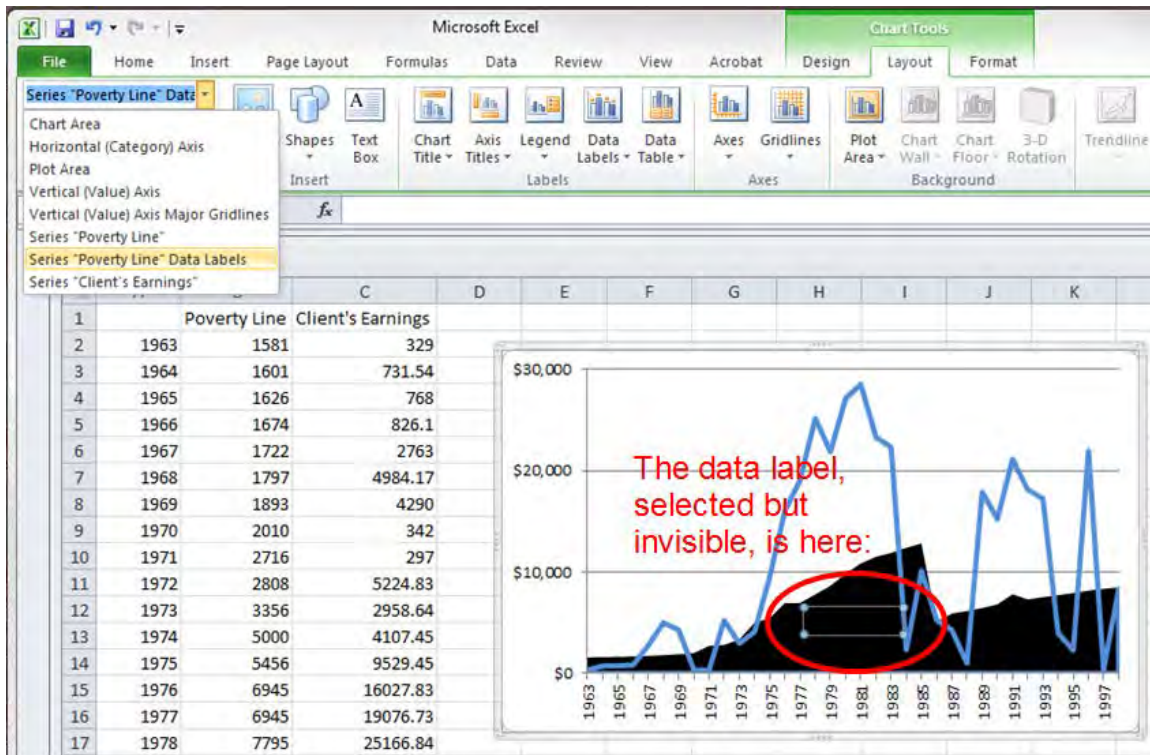
Under the *Label Options* tab, uncheck the *Value* box and check the *Series Name* box. Click *Close*.

Figure 5-13b: Adding a Data Label for Series Name



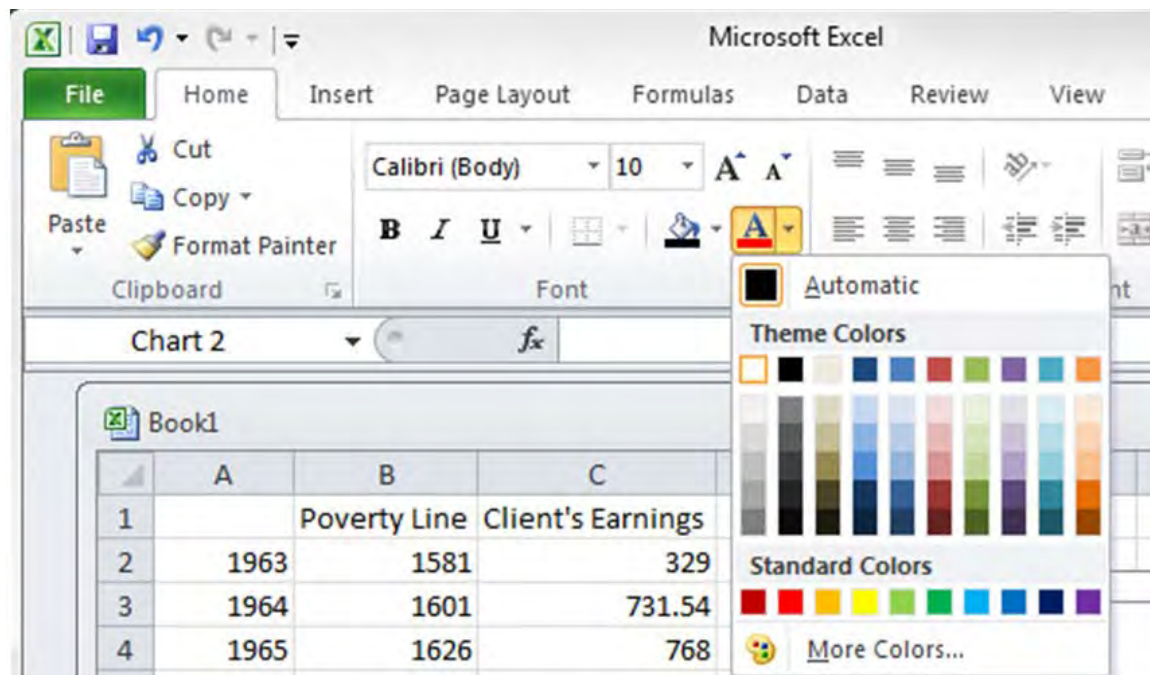
This gives you a data label displaying *Poverty Line* which, in this example, is black text on top of a black solid and therefore invisible. Change the text color to white. Under the *Layout* tab, choose *Series "Poverty Line" Data Labels* from the *Chart Area* drop-down menu. This selects the label.

Figure 5-13c: Selecting the Data Label



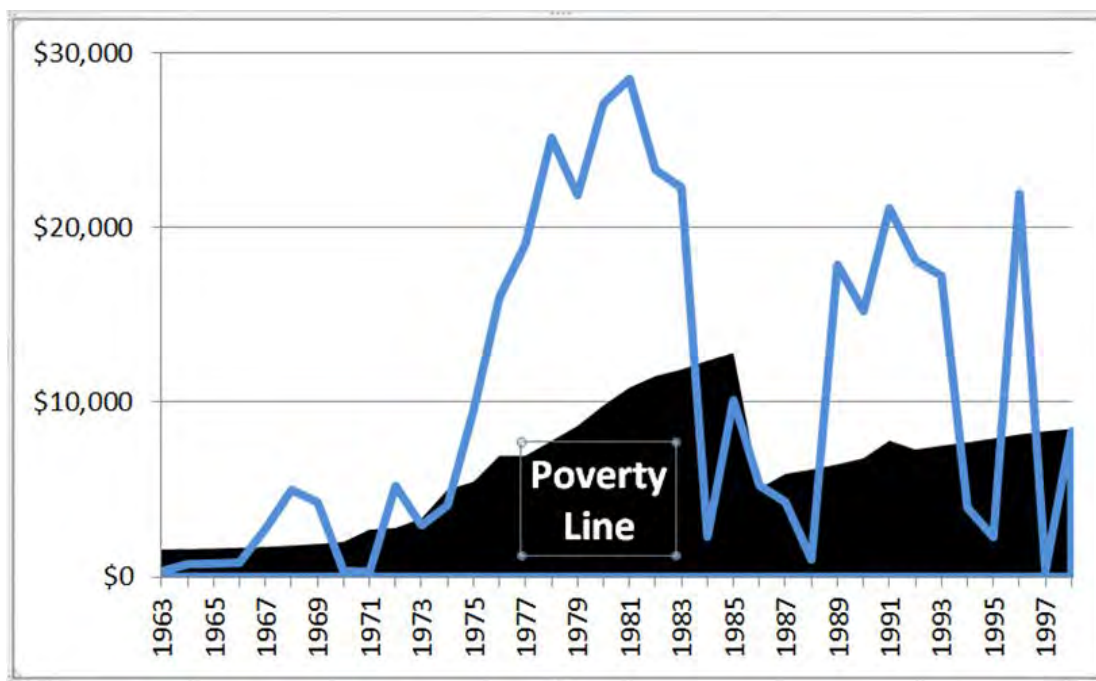
Go to the *Home* tab (or right-click on the selected label), click the *Text Color* button, and choose white.

Figure 5-13d: Changing Data Label Text Color



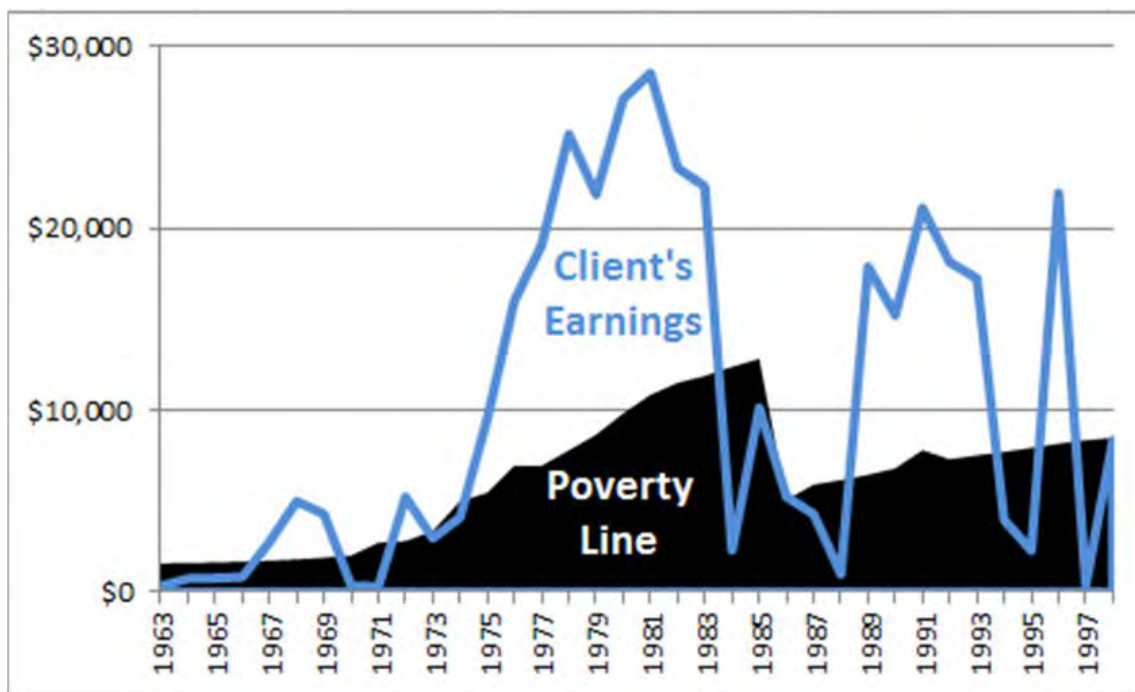
Still on the *Home* tab, make the text to 14-point and boldface so it will stand out. Click and drag the now-visible label to a visually pleasing spot on the chart.

Figure 5-13e: Formatted and Positioned Data Label



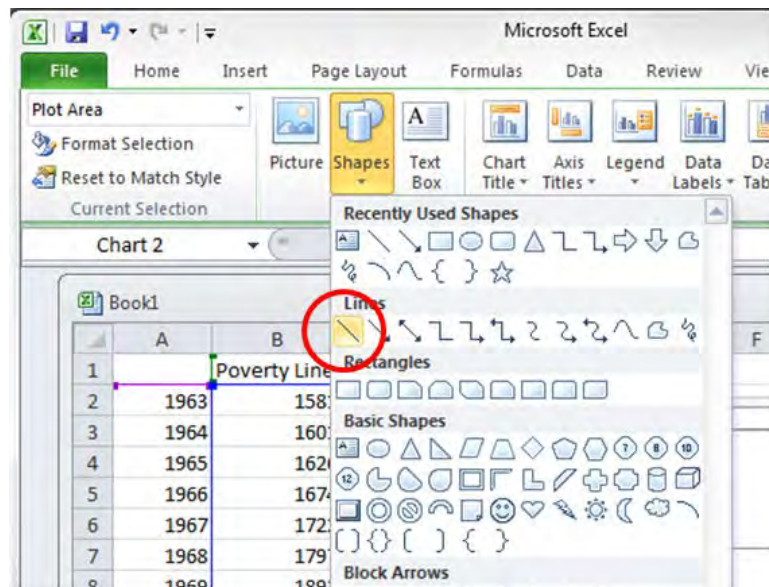
Similarly create and format a data label for client earnings. The example chart sets the text of this data label in the same blue as the data series line.

Figure 5-13f: Chart with Formatted Data Labels



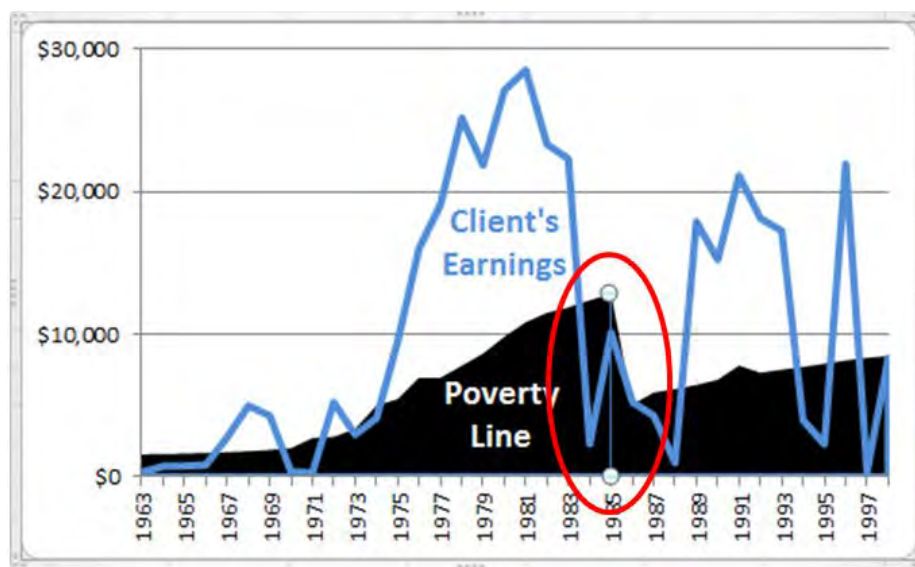
All that remains is to demark the divorce. Under the *Layout* tab, click the *Shapes* button, then choose the straight line option.

Figure 5-14a: Choosing a Shape to Insert Into the Chart



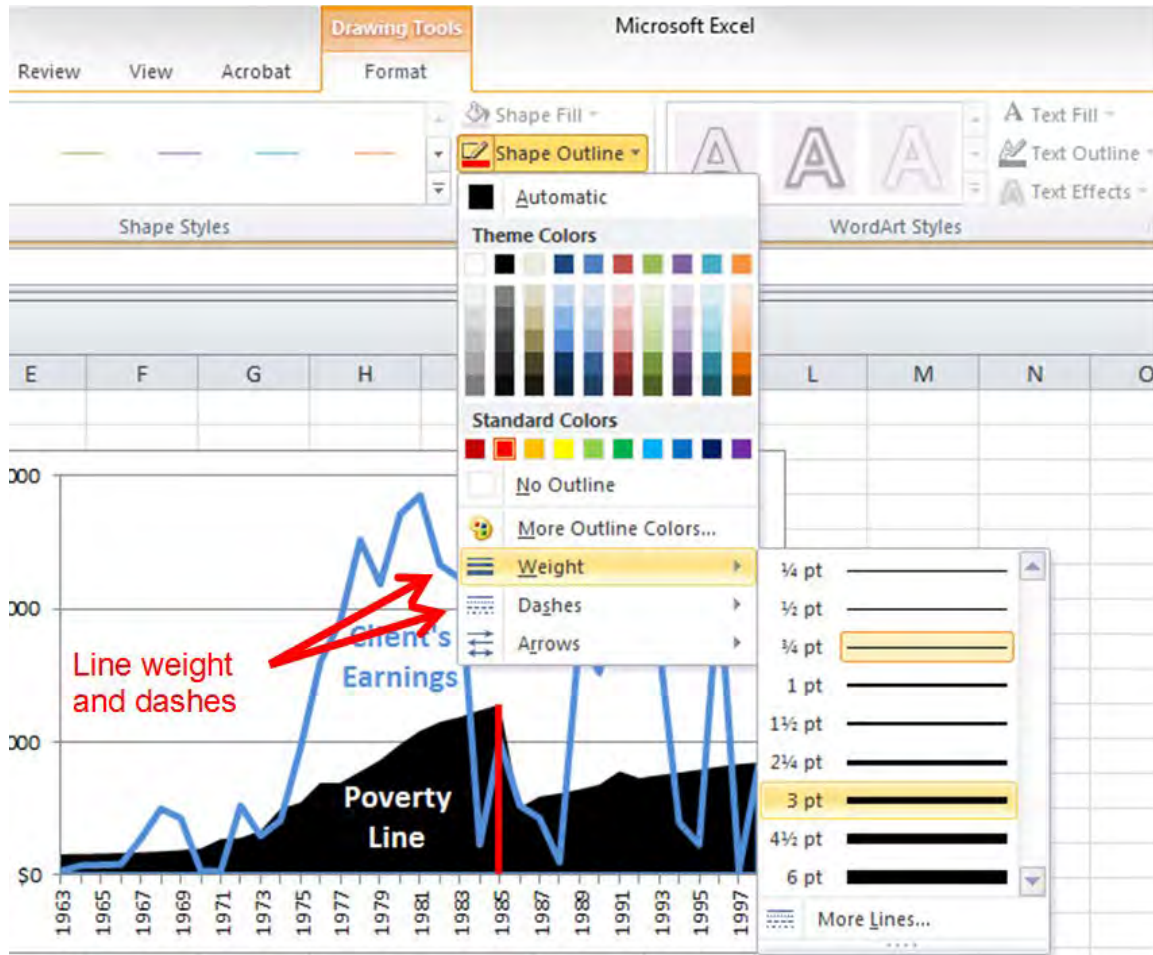
Click and drag your cursor to draw the line. Press *Shift* before you first click to keep the line at 90°. The default line will be thin, blue, and selected (as shown by circles at either end).

Figure 5-14b: Selected Line Shape



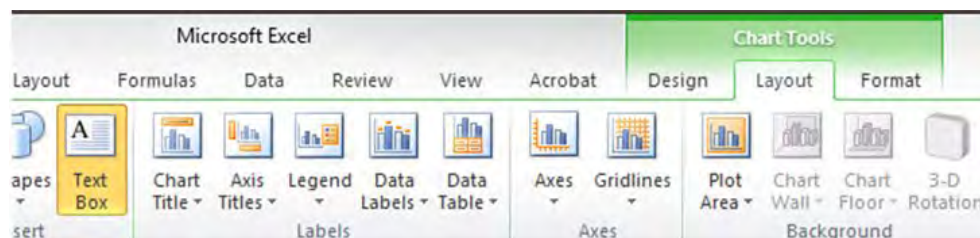
While the line is still selected, under the *Drawing Tools: Format* tab click the *Shape Outline* button. Make the line red and change the weight to 3-point. To make a dashed (instead of continuous) line, after clicking *Shape Outline* choose *Dashes* and then your style of choice.

Figure 5-14c: Changing Line Format



To label the line, insert a text box. From the *Layout* tab, click *Text Box* (next to the *Shapes* button), and click-and-drag your cursor in the area you want to write in.

Figure 5-15a: Text Box



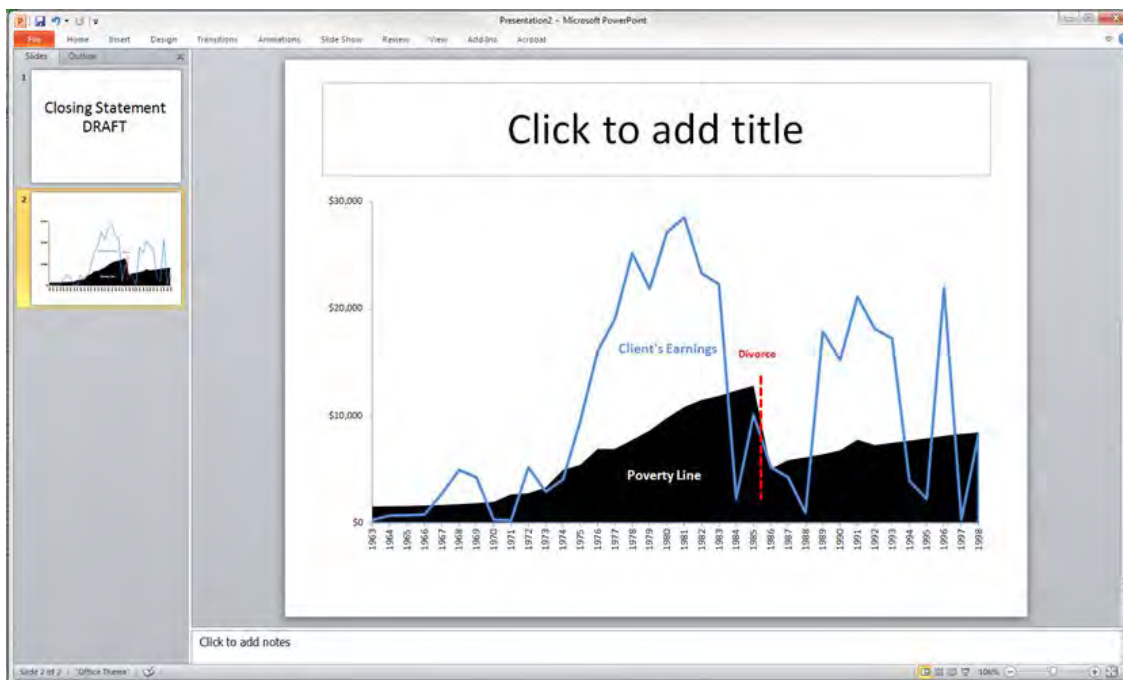
Before typing, format the text. Under the *Drawing Tools: Format* tab, make the text red and boldface. The divorce is a subsidiary facet of this chart, so the text size need not be increased. Type “Divorce” into the text box, then click-and-drag the text into an appropriate location.

Figure 5-15b: Typing in the Text Box



The chart is now finished (or at least the match of Figure 5-1). Having come this far, exporting the chart to PowerPoint is trivial. Click on the chart in Excel and copy it by pressing the *Ctrl* and *C* keys or by right-clicking and selecting *Copy*. Open PowerPoint, and either create a new slideshow or add a slide to one already begun. Paste the chart by pressing the *Ctrl* and *V* keys or right-clicking and selecting *Paste*.

Figure 5-16: PowerPoint Slide with Chart



Moving a chart from Excel to PowerPoint sometimes alters the formatting. Note that in Figure 5-16, the red *Divorce* line has shifted slightly to the left, and the text size appears smaller throughout. Make sure to fine-tune the format before using the slide. Use the steps already outlined, as formatting tools and options are similar across Microsoft Office software such as Excel and PowerPoint. If you receive new data, it is easy to update the information in Excel and adjust the chart immediately.

Conclusion

These five examples demonstrate the possibilities for using Excel spreadsheets as organizational tools. The ability to quickly sort, filter, and search through large quantities of data make spreadsheets an invaluable tool for trial preparation and execution.

Additional Help

This is an overview of Excel Spreadsheets. If you wish to explore other features of Excel or have questions, please contact the resources below.

Defender Services Office—National Litigation Support Team: 510 637-3500

Aoki Law PLLC: 206 624-1900

Other resources are available at www.fd.org under Litigation Support, or the National Litigation Support blog at <http://nlsblog.org/>.

Reference Materials for Using the Cellebrite Reader

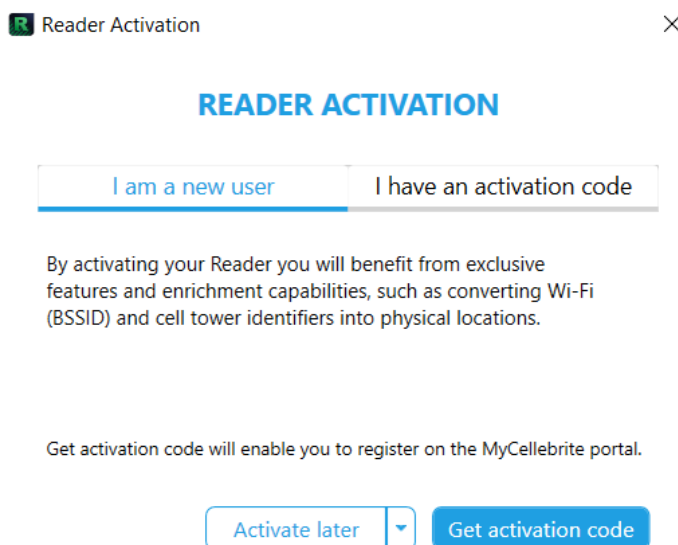
CJA Panel Attorney Representatives Conference - Reference Materials February 29, 2020

The Cellebrite UFED line of products are some of the leading forensic tools used by law enforcement to capture data from cell phones. Though the products themselves cost a significant amount of money, forensic examiners can generate reports from the system in three formats (.PDF, .HTML, and .UFDR) that others can review without having the Cellebrite UFED software program. This document provides an overview of what you can do when you receive a report in .UFDR format and the examiner has provided you a copy of the Cellebrite Reader software tool.

[NOTE: The Cellebrite Reader is a free application which can be provided by the examiner when they provide the .UFDR report. You cannot download the software on your own, but someone who has a license of Cellebrite UFED can provide it to you.]

This document covers the core functionality of the Cellebrite Reader program, including how to review, sort and filter mobile device evidence when it is provided in .UFDR format. [NOTE: This application does not work on Macs. This program was previously called the UFED Reader. It has been rebranded as the Cellebrite Reader. These programs are essentially identical.]

After you launch the program, you may see the following message:



The screenshot shows a window titled "Reader Activation" with a close button (X) in the top right corner. The main heading is "READER ACTIVATION" in blue. Below it are two tabs: "I am a new user" (selected) and "I have an activation code". The text below the tabs states: "By activating your Reader you will benefit from exclusive features and enrichment capabilities, such as converting Wi-Fi (BSSID) and cell tower identifiers into physical locations." At the bottom, there is a note: "Get activation code will enable you to register on the MyCellebrite portal." and two buttons: "Activate later" (with a dropdown arrow) and "Get activation code".

Reader Activation

READER ACTIVATION

[I am a new user](#) | [I have an activation code](#)

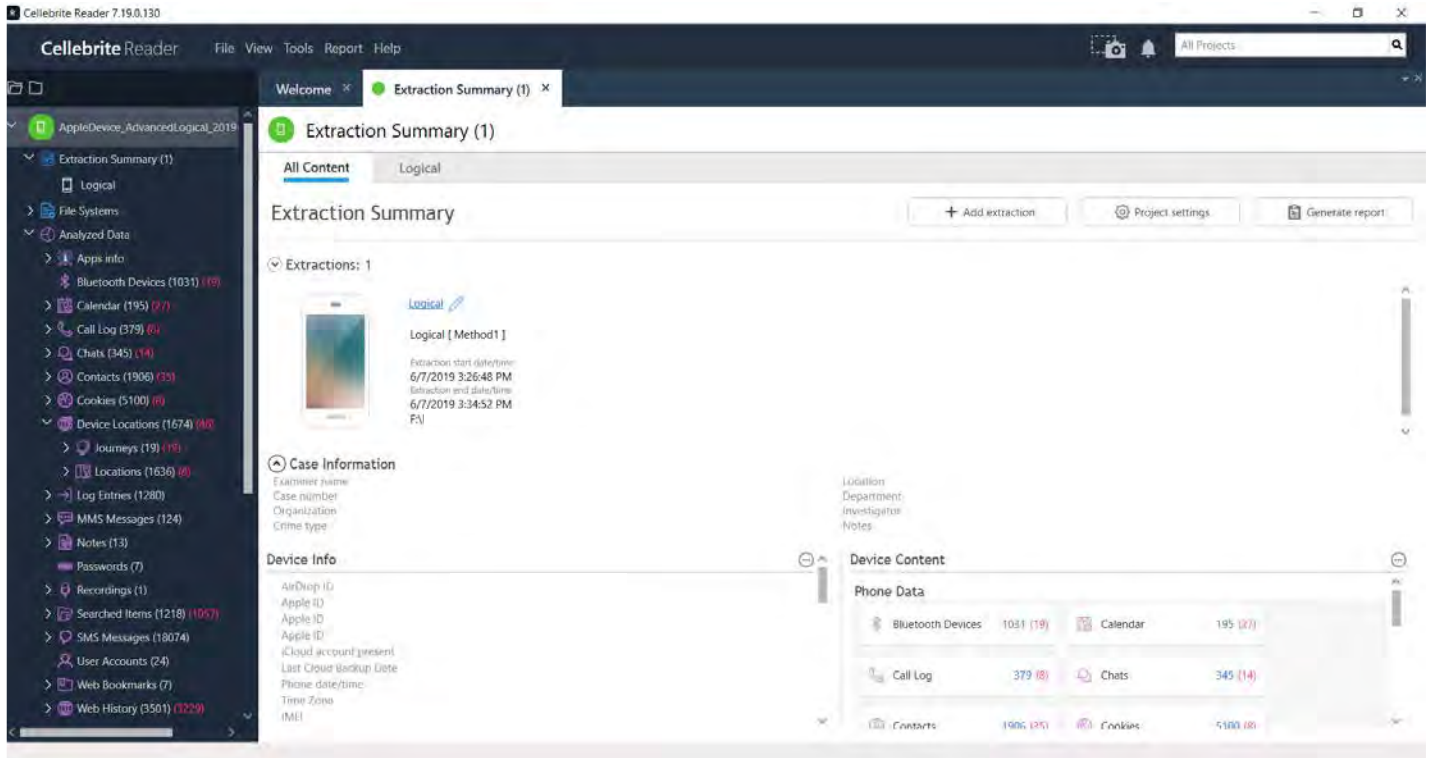
By activating your Reader you will benefit from exclusive features and enrichment capabilities, such as converting Wi-Fi (BSSID) and cell tower identifiers into physical locations.

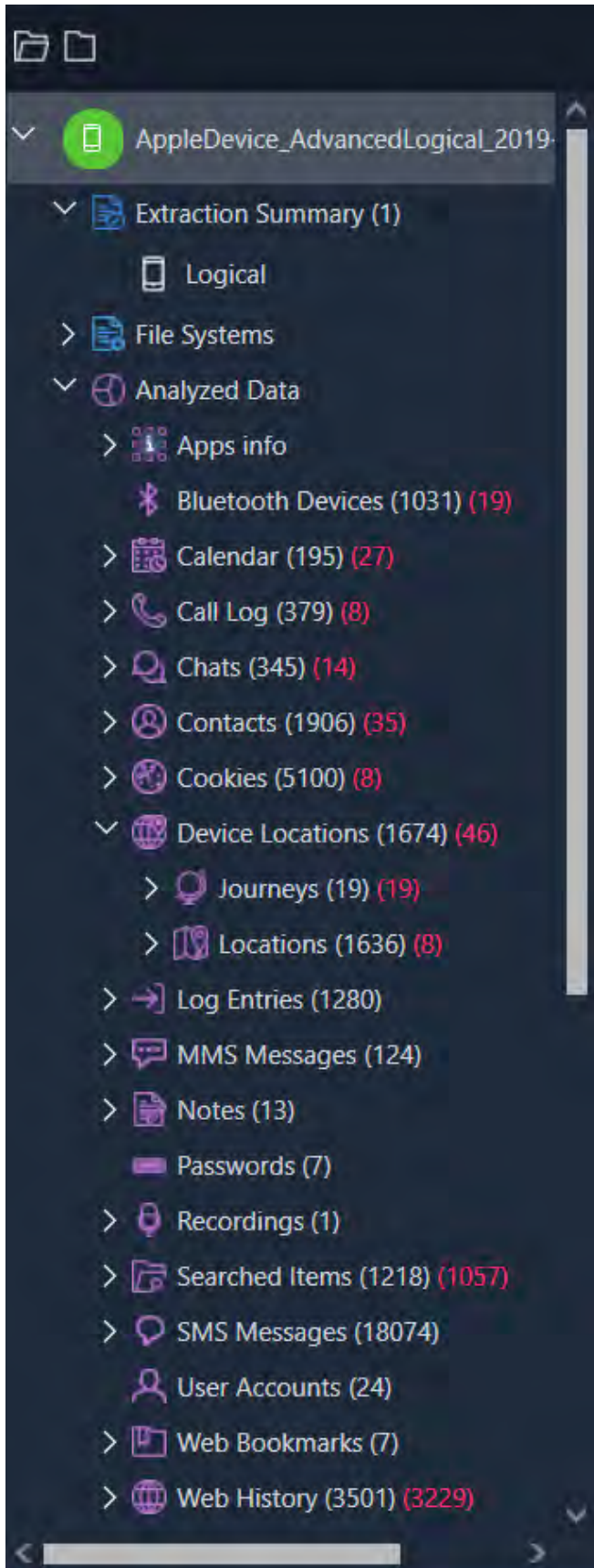
Get activation code will enable you to register on the MyCellebrite portal.

[Activate later](#) | [Get activation code](#)

If so, left click the X on the top right. You do not need to sign in or use an activation code to access data. But if you do activate the Cellebrite Reader, you have access to additional tools.

This is the Cellebrite Reader home screen:





Here is an example of the Cellebrite Reader project tree, which is located on the left-hand side of the home screen.

From here you may select and view contacts, images, etc. For example, one category listed is **Contacts**.

Next to **Contacts** in the parenthesis is a number which represents the number of entries associated with the item. For example, this report includes 1906 entries under the **Contacts**. The numbers in **red** represents the number of deleted entries that the program recovered.

In order to navigate to one of these items, left click on it.

There are several ways to search for items within a Cellebrite Reader report. This includes searching the entire report (or multiple reports) with the All Projects search, which is located on the top right of the home screen.

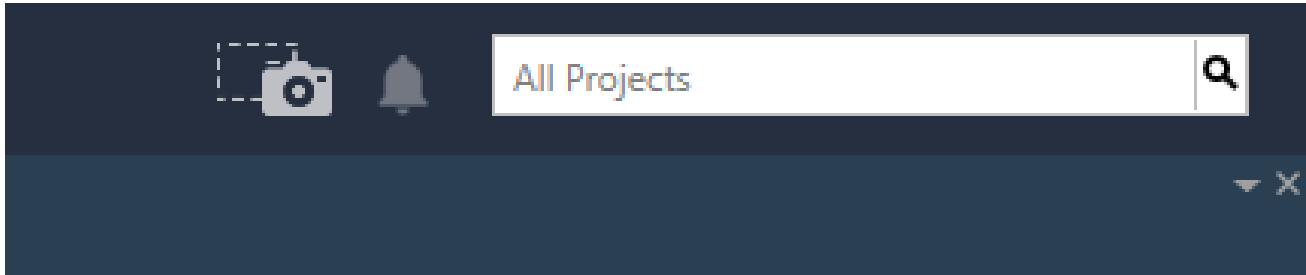
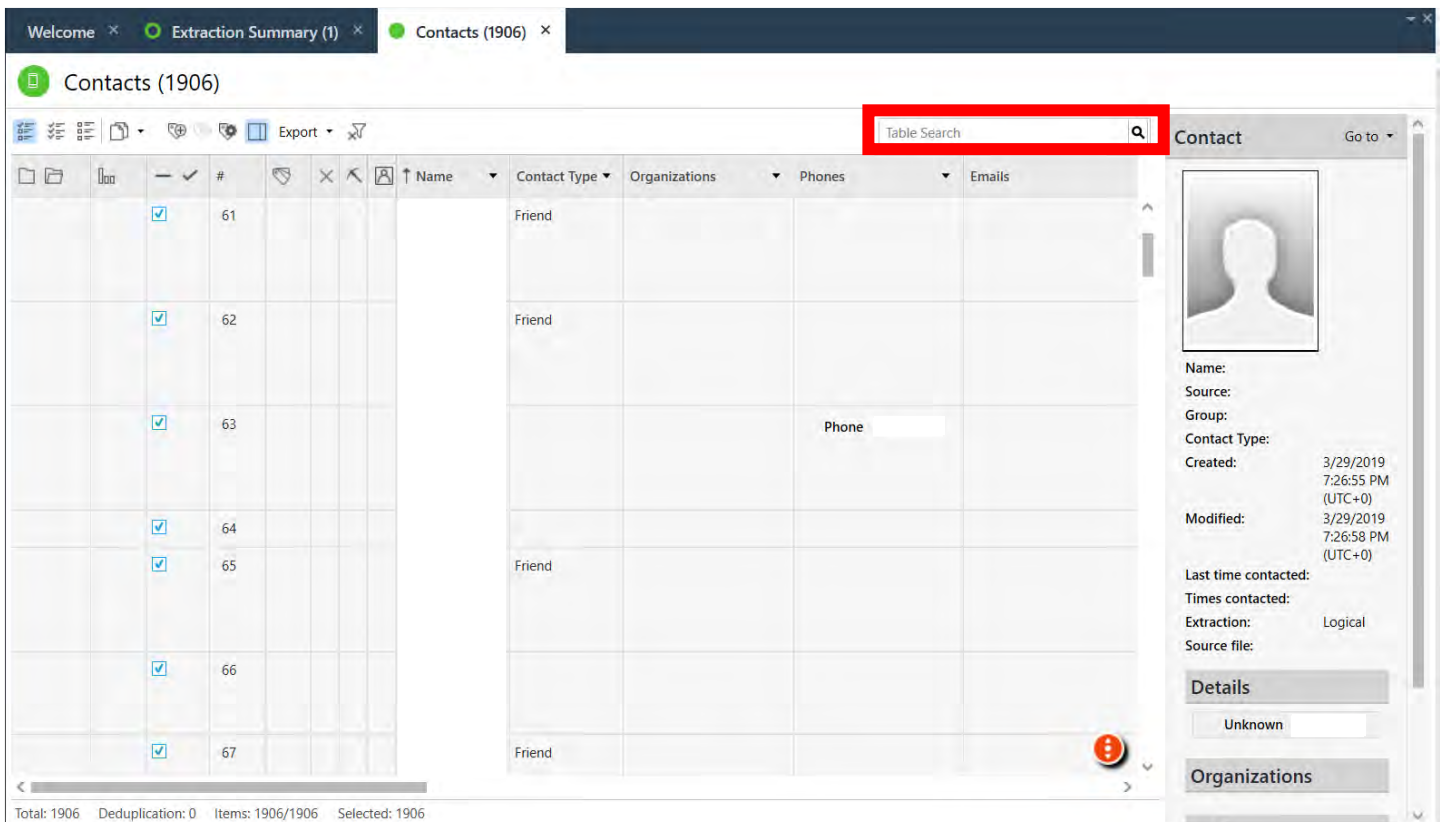
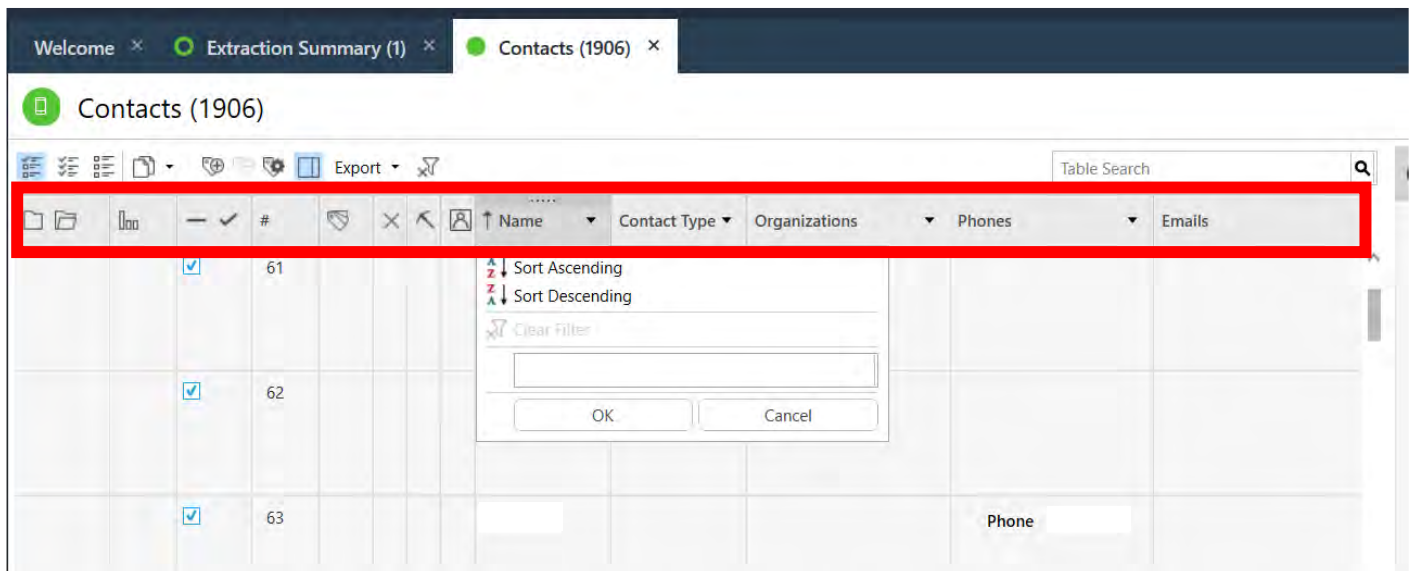


Table Search, on the other hand, only searches for items within a selected category: for instance, **Contacts**.

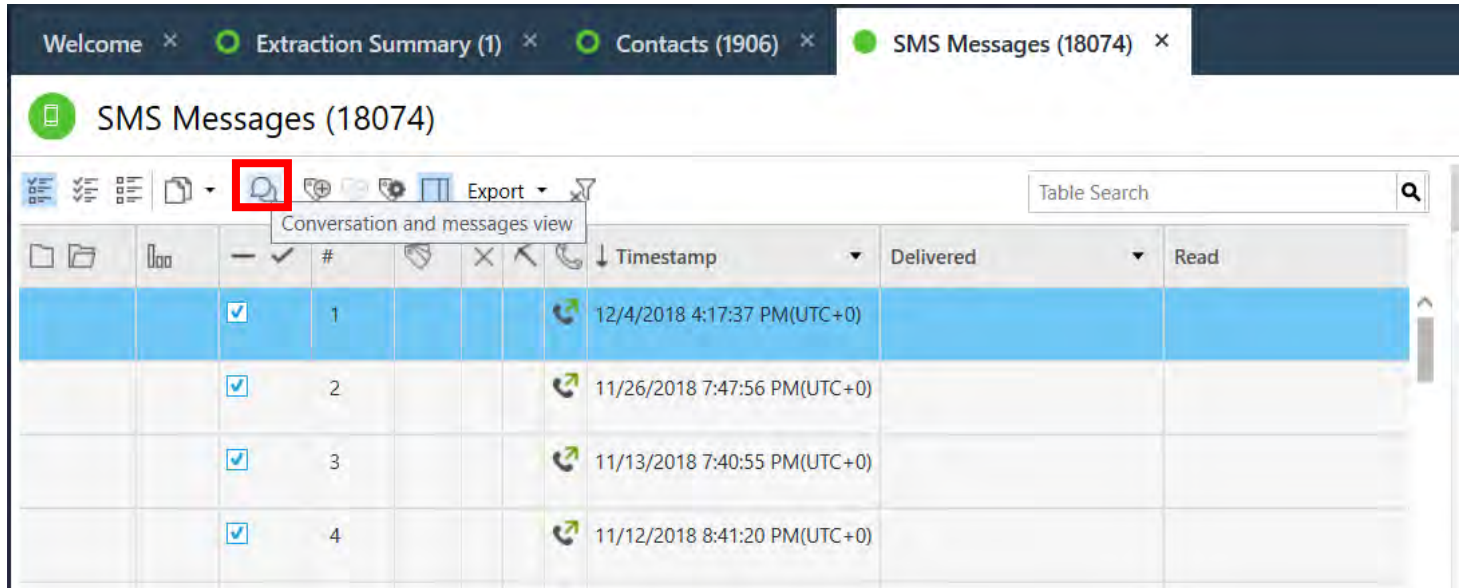


A user can also filter within a category. Most of the information contained within the report is stored in a format similar to Excel. As the following example from **Contacts** demonstrates, there are filtering options for **Name** and **Phones** etc. To filter for **Name**, left click on ▼ and type a name in the search bar.

In addition to filtering these columns, the option bar contained in the red box below allows many sorting features to organize your project.



One benefit of using the Cellebrite Reader is the ability to view text messages, chats, and emails in conversation view, as opposed to viewing the messages as sent and received messages. To open conversation view, after selecting a message, left click the following button:



The screenshot shows the Cellebrite Reader interface with the 'SMS Messages (18074)' tab selected. A red box highlights the 'Conversation and messages view' button in the toolbar. The table below shows a list of messages with columns for selection, ID, timestamp, delivered status, and read status.

			#			Timestamp	Delivered	Read
☒			1			12/4/2018 4:17:37 PM(UTC+0)		
☒			2			11/26/2018 7:47:56 PM(UTC+0)		
☒			3			11/13/2018 7:40:55 PM(UTC+0)		
☒			4			11/12/2018 8:41:20 PM(UTC+0)		

This will open a new project named **Conversation (SMS Messages)**, where correspondence is shown in a more reader friendly view.

The screenshot displays the Cellebrite Reader software interface. At the top, a dark blue header bar contains several tabs: 'Welcome', 'Extraction Summary (1)', 'Contacts (1906)', 'SMS Messages (18074)', and the active tab 'Conversation (SMS Message)'. Below the header, the main window is titled 'Conversation (SMS Message)'. On the left side, there is a 'Participants (3)' section showing a list of contacts, with 'Unknown (owner)' being the only one visible. Below this is a 'Conversation' section with a toggle for 'Select/Deselect all 402 messages'. The conversation itself is a list of messages. The first message is a blue bubble from an unknown contact, dated 10/22/2018 10:34:38 PM(UTC+0). The second and third messages are green bubbles to the same unknown contact, dated 10/22/2018 10:34:47 PM(UTC+0) and 10/22/2018 10:34:58 PM(UTC+0), with the text 'Oh ok!' and 'Got r done! Sweet' respectively. The fourth message is another blue bubble from the unknown contact, dated 10/22/2018 10:35:24 PM(UTC+0). On the right side of the interface, there is a sidebar with the title 'SMS Message'. It contains fields for 'Source:', 'SMSC:', 'Folder: Inbox', 'Timestamp: 10/22/2018 10:34:38 PM(UTC+0)', 'Delivered:', 'Read: 10/22/2018 10:34:43 PM(UTC+0)', 'Status: Read', and 'Extraction: Logical'. Below these fields are sections for 'Source file:', 'All timestamps', 'Parties' (showing 'From:' and 'To: (owner)'), and 'Body'.

Another helpful tool is the **Timeline** feature. The **Timeline** contains events in chronological order (e.g., text messages, phone calls, web browsing history, and location data during a particular day).

The screenshot displays the Cellebrite Reader Timeline (50032) interface. The top navigation bar includes tabs for Welcome, Extraction Summary (1), Contacts (1906), SMS Messages (18074), Conversation (SMS Message), and Timeline (50032). The main area shows a list of events in chronological order, with a red box highlighting the toolbar. A date picker is open, showing January 2020. The right sidebar contains fields for Calendar Entry details.

Category	Subject	Start Date	End Date	Reminders	Priority	Status	Class	Repeat Rule	Repeat Until	Repeat Day	Repeat Interval	Extraction	Source file
Birthdays								Yearly		None	1	Logical	

Attendees

Details

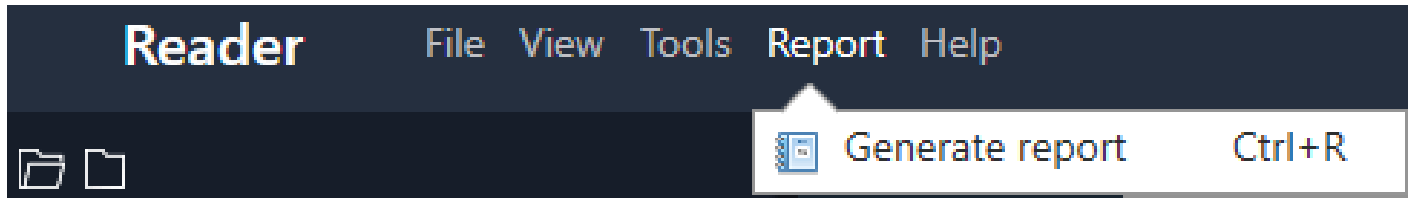
Map

Location:

Event Position:

Total: 50032 Deduplication: 0 Items: 50032/50032 Selected: 50032

The **Cellebrite Reader** allows users to generate reports. To do so, left click on the **Report** tab at the top right of the screen. Then, left click **Generate report**.



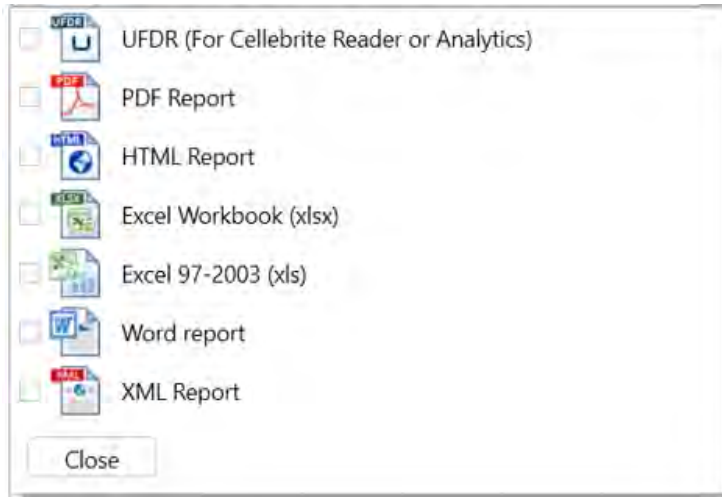
The following screen will appear:

The image shows the 'Generate Report' dialog box with the 'General' tab selected. The dialog contains the following fields and sections:

- General** (selected tab):
 - Report Dataset: AppleDevice_Advanced...
 - Security
 - Formatting
 - Table sorting
- File name:** AppleDevice_AdvancedLogical_2019-06-07_Report_2020-01-31_Report
- Save to:** C:\Users\john\Documents\My Reports (with a 'Browse' button)
- Report sub directory:** 2020-01-31.15-10-02
- Project:** AppleDevice_AdvancedLogical_2019-06-07_Report
- Format:** (dropdown menu)
- Case Information:**
 - Examiner name: (dropdown menu)
 - Location: (dropdown menu)
 - Case number: (dropdown menu)
 - Department: (dropdown menu)
 - Organization: (dropdown menu)
 - Investigator: (dropdown menu)
 - Crime type: (dropdown menu)
 - Case name: (dropdown menu)
 - Evidence number: (dropdown menu)
 - Notes: (text area)

At the bottom of the dialog, there are buttons for 'Update report settings', 'Previous', 'Next', and 'Cancel'.

Next to **Format**, left click on the ▼. The following menu appears:



In order to generate a report, click on the box next to the type of report you want to create.

The **Case Information** may require you to input your name in the **Examiner name** field, or it may autopopulate.

Case Information

Location:

Examiner name:

Left click the **Next** button at the bottom of the screen.

From there, you can decide what data to include within the new report:

Generate Report

General

Report Dataset

AppleDevice_Advanc...

Security

Formatting

Table sorting

PDF Report

Report Dataset - AppleDevice_AdvancedLogical_2019-06-07_Report

Time range filter

☐ Include only events between these dates

From:

To:

☐ Include items without a timestamp

Data types

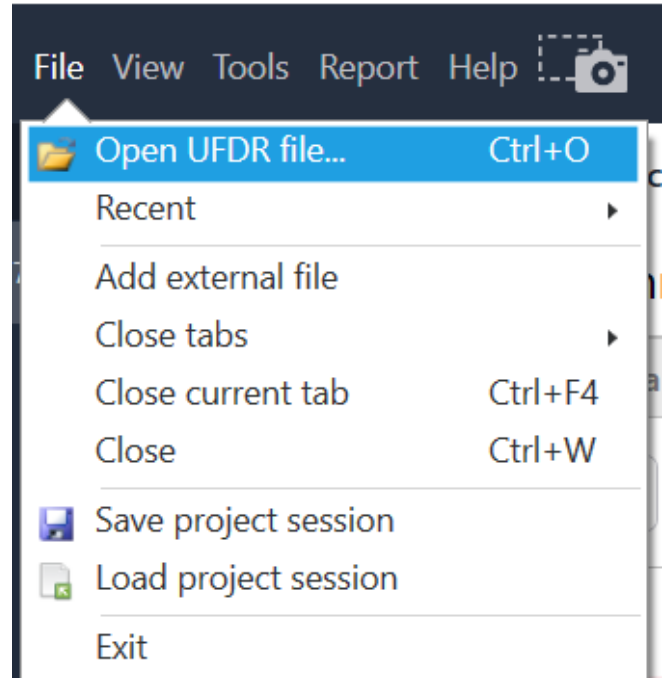
☒ Select/Deselect All

☒ Archives (1/1)	☒ Log Entries (1280/1280)
☒ Audio (1/1)	☒ MMS Messages (124/124)
☒ Bluetooth Devices (1031/1031)	☒ Notes (13/13)
☒ Calendar (195/195)	☒ Passwords (7/7)
☒ Call Log (379/379)	☒ Recordings (1/1)
☒ Chats (345/345)	☒ Searched Items (1218/1218)
☒ Configurations (4214/4214)	☒ SMS Messages (18074/18074)
☒ Contacts (1906/1906)	☒ Text (62/62)
☒ Cookies (5100/5100)	☒ Timeline (50032/50032)
☒ Databases (275/275)	☒ User Accounts (24/24)
☒ Device Info (34/34)	☒ Videos (16/16)
☒ Images (1361/1361)	☒ Web Bookmarks (7/7)

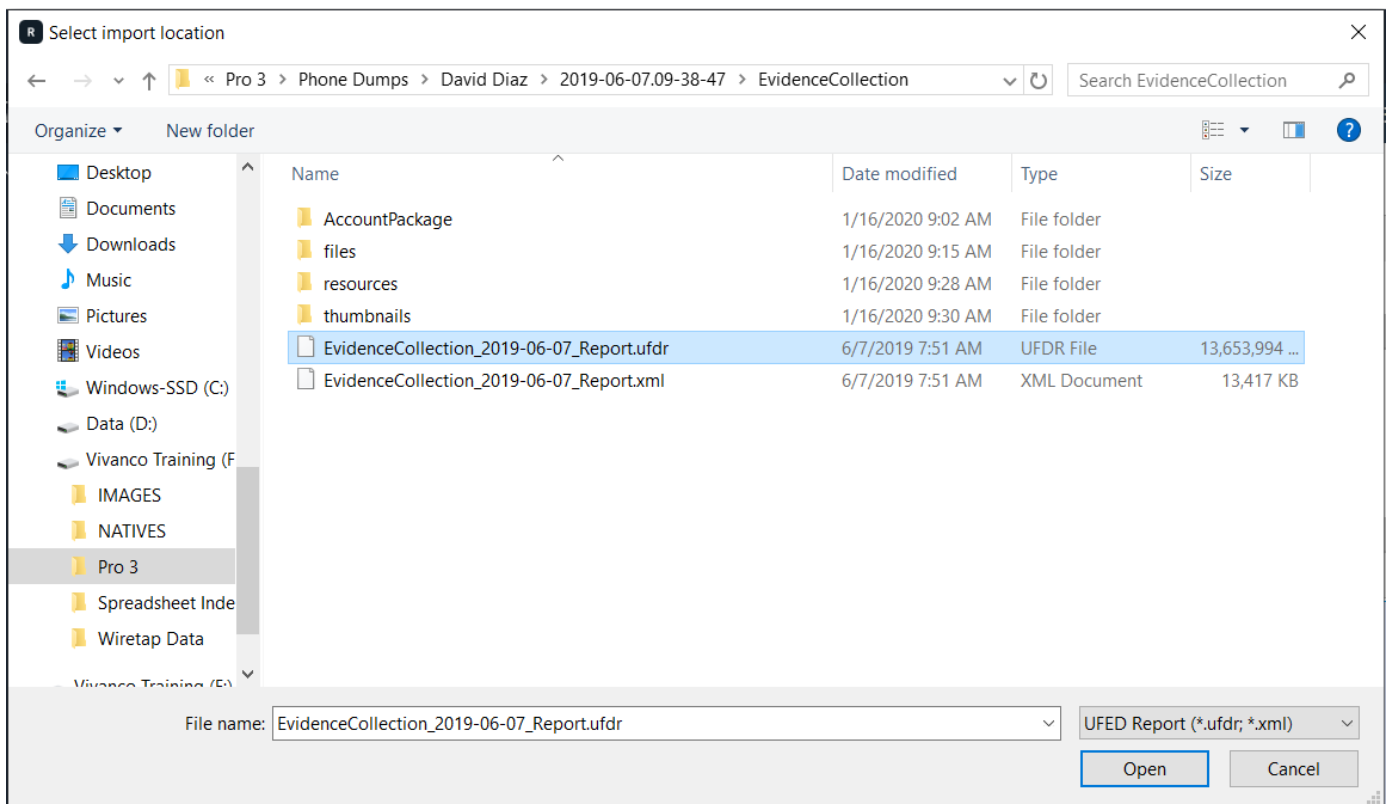
Preferences

☒ Tags (0/0)	☐ Tags only (0/0)
☐ Calculate SHA-2 (256 bit) hash	☐ Redact image thumbnails
☒ Calculate MD5 (128 bit) hash	☐ Include merged items (analyzed data)
☐ Include translations	☐ Include merged items (data files)
☐ Include known files	☒ Include chat bubbles
	☐ Include source info indication
	☒ Include enrichments
	☐ Hide extraction source indication

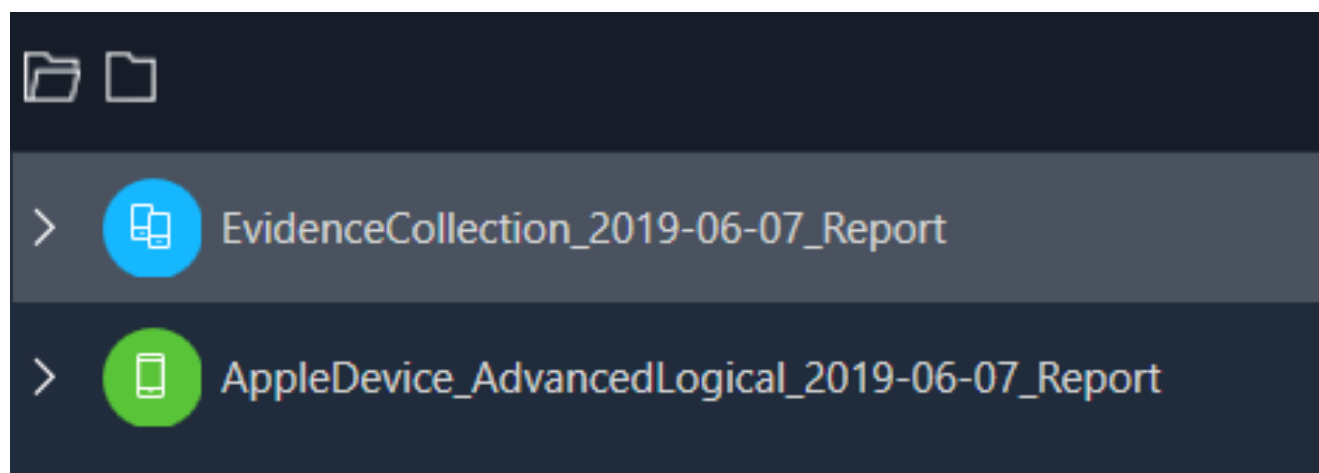
This application also allows you to view multiple device projects, at one time. To do this, select file in the upper left-hand corner, once the dropdown menu appears select **Open UFDR file**.



This will open a browsing box where you can select your new file. Select **another phone** report from the drive, for example, **EvidenceCollection_2019-06-07_Report.ufdr**. Click through a devices folder to select the UFDR file.



This will take a moment to load. Once loaded, the project tree will now show two device reports. You may easily view, compare, and search throughout multiple devices without having to exit and reopen the application.



Cellebrite Reader Request Language

When data is extracted from a digital device, the data can be stored in several formats depending on the type of device and type of extraction. Extractions can be produced in .html, .zip, .rar, .tar, .bin, clbx, or .dar formats. When the extraction is completed using Cellebrite UFED, files are often created with .ufd and/or .ufdx extensions. Once data has been extracted, the government has several options on how to produce it. The most complete extraction report is the Cellebrite Reader, which is contained the .UFDR format.¹

To ensure that you have all appropriate data from the government, the following discovery requests are suggested:

- (1) All original Extraction folders/files (e.g., Logical, Advanced Logical, File System, Physical, Full File System, Full File System (checkm8)) that have been performed on all devices;
- (2) A Cellebrite Reader Report produced from the Extractions (this must also include the Cellebrite Reader .exe program); and
- (3) If available (e.g., a logical extraction was performed), please provide the original extraction report.

¹ For extractions completed by other tools (e.g., GrayKey, Magnet Axion, etc.), request all data as the result of the extraction process (e.g., .bin files, .zip files, .tar files, .dar files; etc.).

ANNOUNCEMENT

SEAN BRODERICK, NATIONAL LITIGATION SUPPORT ADMINISTRATOR,
DEFENDER SERVICES OFFICE TRAINING DIVISION
FEDERAL PUBLIC DEFENDER
1301 CLAY STREET, SUITE 1350N
OAKLAND, CA 94612
TELEPHONE: (510) 637-3500

Date: July 18, 2017
From: Sean Broderick
To: Federal Defenders and CJA Panel Attorney Representatives
CC: Administrative Officers, Computer Systems Administrators, DAWG members, Cait Clarke, Conrad Huygen, Lori Green, Lisa M. Watson, Brian Wiggins
Re: *E-discovery assistance available through Casepoint Online Document Review Platform for Select CJA Panel/FDO Cases*

We are pleased to announce that the Defender Services program has contracted with Casepoint, LLC to provide an online document review platform for CJA panel attorneys and federal defender offices (FDOs) in select federal Criminal Justice Act (CJA) cases. Casepoint LLC hosts Casepoint, an online, e-Discovery platform used by law firms, major corporations and governmental legal departments. Casepoint includes computerized early case assessment, technology assisted review (TAR), cloud analytics, data processing and a fully hosted review platform. The platform has an easy-to-use interface which makes its accessible to all end users, from novice users to legal professionals who are experienced with other document review platforms.

Casepoint is designed to assist attorneys and their staff in organizing, managing and analyzing large volumes of discovery. If approved, a set amount of case material from CJA / FDO cases can be hosted on Casepoint without the need to seek funding from the trial court. If a case has more discovery than can be hosted under the contract, a discounted rate is available for larger cases needing to host additional data. Using a secure, web-hosted document review platform such as Casepoint is advantageous in multi-defendant cases with large volumes of information. Case materials are located in one central repository and easily reviewed, tagged and accessed by all defense teams from wherever they are as long as they have an internet connection. This greatly alleviates the need for panel attorneys to have specific hardware, software or IT support usually necessary to utilize similar review platforms on your local office network. Along with the online document review platform, Casepoint, LLC provides project management expertise and training for all users of the system.

Casepoint and other legal review platforms are different from online storage services such as Box.com and Dropbox. Storage services such as Box.com and Dropbox are built for the cloud

storage and sharing of files with limited other functionality whereas Casepoint is a document review tool developed specifically for legal work. Some key features of Casepoint that will be key to the management of discovery include the ability to maintain private notes in a multi-defendant case that cannot be seen by other legal teams on the case, universal bulk tagging, filtering, and annotation which can be shared by all legal teams; review of e-discovery without changing any of the underlying background information; and having the option to view many file types within the platform without having the original program in which the document was created in on your computer (e.g. you can see an Excel spreadsheet without having Microsoft Excel installed on your computer). NOTE: If you have a CJA case that could benefit from the short-term storage of data or the transfer of data on the cloud, please contact the National Litigation Support Team (NLST) as we have a national contract with Box.com and can provide hosted space at no cost to panel attorneys.

To assess whether your case qualifies for Defender Services funded secure hosted space, please do the following:

1. Have an attorney on the case contact Kelly Scribner at 510-637-1952 to discuss the discovery you wish to have hosted. Make sure to identify whether the local federal defender office is involved as well and whether there are any retained counsel. To assist you prior to your call, please review the Initial Discovery and 3rd Party Data Assessment Checklist” on fd.org at <https://www.fd.org/sites/default/files/Litigation%20Support/initial-discovery-assessment-checklist.pdf> as we will review the answers to these questions in determining whether the use of Casepoint is appropriate for your case.
2. Schedule a demonstration of Casepoint for all parties with the NLST to ensure that the platform technically fits your needs and that the all defense teams are comfortable with the user interface.
3. Discuss the option of using Casepoint with all defense teams and identify any parties who do not wish to participate and have access to the platform.

Allocation of hosted space will be based on a first come first serve basis and only for cases in which there is a benefit to having discovery hosted. Space is limited and this is a service for all CJA panel and FDO attorneys, so we cannot guarantee there will be space available for every case. If space is not available, Casepoint will provide a reduced rate for CJA panel attorneys and FDOs.

Please do not hesitate to contact either Kelly Scribner (kelly_scribner@fd.org) or Sean Broderick (sean_broderick@fd.org) at 510-637-3500 if you have any questions.

Working with Email in Discovery: Processing Options and Review Workflows

Posted on [July 1, 2022](#) by [joewanzala](#)

Introduction

Technologies that allow for easier review of ediscovery in native format have become more affordable and accessible. Working with files in native format has several advantages including avoiding loss of potentially relevant information, access to metadata and better searchability. Email is one of the most common of the native formats produced in discovery. This article will explore some approaches for processing email and identify a number of low-cost of tools that can assist. (This article deals with the processing but not the substantive review of emails for case analysis – for this you should consider other tools such as [CaseMap](#), or – for larger collections of emails – review platforms such as [Casepoint](#) or [IPRO](#).)

The tools and approaches you select will depend on a combination of three factors: (1) volume, (2) format(s) and (3) the defense team goals. While a single tool might facilitate a discreet goal, more involved goals may require different approaches with a combination of tools. These scenarios can be ends in themselves or phases in an overall workflow. This article does not try to anticipate every possible situation that might arise but will explore a few common scenarios.

Many electronic file formats produced in the course discovery like Acrobat, Excel and Word files are generally accessible via standard software available on most computers. However, email file formats like MSG, EML, PST, and MBOX files present more of a challenge as often the recipient may not know how to access these files.

Below is a quick overview of some of the most common email file formats encountered in eDiscovery that will be discussed in this article:

- **MSG:** A Microsoft format for single emails. Often associated with the Microsoft Outlook email client.
- **PST:** A Microsoft format for a collection of emails (as well as other potential items including: Calendars, Contacts, Notes and Tasks). Often associated with the Microsoft Outlook email client.
- **EML:** Email format for single emails used by many email clients including Novell GroupWise, Lotus notes, Windows Mail, Mozilla Thunderbird, and Postbox.
- **MBOX:** Email format for a collection of emails (as well as other potential items including: Calendars, Contacts, Notes and Tasks) used by many email clients including Novell GroupWise, Lotus Notes, Windows Mail, Mozilla Thunderbird, and Postbox.

All four formats are typically received in discovery and subpoena returns. Google Takeout, a service offered by Google which allows you to download your email, will produce emails in the MBOX format.

Working with these email formats consists of understanding which tool is compatible with which file format, and which tool or set of tools will most effectively allow you to achieve your goals. Below is a table that maps out some of various tools available in terms of which file formats they are able to process, their functionality and cost. Before using any of these tools, make sure to work with a copy of the data as opposed to the original.

Software	Compatible Formats	Cost	Functionality
Mozilla Thunderbird with the Import Export Tools add-on	EML, MBOX	free	View emails, convert to EML, HTML, MBOX and PDF (without attachments)

Software	Compatible Formats	Cost	Functionality
Mbox Viewer	EML, MBOX	free	View emails, convert to HTML or PDF (without attachments)
PSTViewer Pro	MSG, EML, PST, MBOX	\$129	View emails, convert to multiple formats including EML, HTML, MBOX and PDF (includes advanced PDF attachment image options)
MS Outlook	MSG, EML, PST	\$159 or \$69.99 per year	View emails, export to MSG, PST and PDF (requires Acrobat integration)
Aid4Mail	MSG, EML, PST, MBOX	\$299 per year	Convert email to multiple formats including MSG, HTML, EML, PST, MBOX and PDF
dtsearch	MSG, EML, PST, MBOX	\$199 or *free	Search and view results in email viewer panel (no conversion or export options)

*For information about a free license of dtSearch available to CJA Panel Attorneys see: nlsblog.org/2014/03/25/dtsearch-desktop

This article will discuss demonstrate how to work with emails in terms of a series of discreet tasks including:

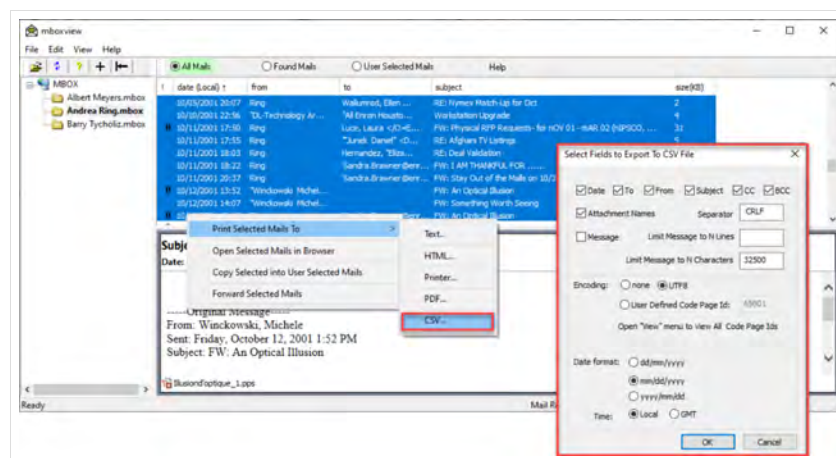
1. [Generate a list of emails to review.](#)
2. [Viewing emails.](#)
3. [Search, tag, and convert emails.](#)
4. [Working with email attachments.](#)

1. Generating a list of emails for review.

An initial task at the outset of a case might be to generate an index to facilitate early case assessment. Some programs, like [PstViewer Pro](#), will work with many formats while other programs, like [Mbox Viewer](#), work with a more limited number of formats.

■ Example 1 – Generating a list using [Mbox Viewer](#):

Mbox Viewer is a free tool that allows you to preview emails and generate a list of emails by simply selecting messages in the viewer, doing a right click and selecting print to CSV, then selecting which fields you would like to include in the spreadsheet (*Figure 1-1*).



— Figure 1-1

- The resulting CSV file contains a table that can be opened in Excel or imported into other programs (*Figure 1-2*).

	A	B	C	D	E	F	G	H
1	Date	From Name	From Address	To	Subject	CC	BCC	AttachmentNames
2	10/9/2001 10:07				RE: System Match-Up for Oct			
3	10/10/2001 22:56	DuTechnology	imcanotes-di-technology2@architectures4@enron.com	all@2@enron.com; choudhary@enron.com	Workstation Upgrade			
4	10/11/2001 17:50	ring	ring		PW: Physical BPP Requests for NOV 01 -			"ATTN:053.txt"
5	10/11/2001 17:55			djunch@aglobalmarkets.com	mail 02 on MSCD, PIEDMONT AND WEST KY			"BPPassInfo.xls"
6	10/11/2001 18:01	ring	ring		RE: Alghani TV Listings			
7	10/11/2001 18:22	ring	ring	sandra.branner@enron.com	RE: Deal Validation			
8	10/11/2001 20:37	ring	ring	sandra.branner@enron.com	PW: I AM THANKFUL FOR			
9	10/12/2001 13:52	Winickowski, Michele	michale.winickowski@enron.com		Pw: Stay Out of the Mailbox on 10/31			"Illusionofoptique_3.ppt"
10	10/12/2001 14:07	Winickowski, Michele	michale.winickowski@enron.com		Pw: Something Worth Seeing			
11	10/12/2001 28:38	ring	ring	sandra.branner@enron.com	Pw: An Optical Illusion			"Illusionofoptique_3.ppt"

Figure 1-2

2. Viewing emails.

While a list will provide you with a high-level overview of the emails you have in terms of subject matter, players involved and so forth, a closer review will require a different approach. [MS Outlook](#), [Mbox Viewer](#) and [Mozilla Thunderbird](#) are all tools which can be utilized for this purpose.

■ Example 2.1 – Viewing emails received in PST format using [MS Outlook](#):

Within Outlook open the 'File' menu, select the 'Open & Export' button, then 'Open Outlook Data File'. Navigate to the folder containing the PST file ([Figure 2-1](#)) and select the file to import. Outlook will create a folder within the 'Personal folders' from where you can conduct a review of the files.

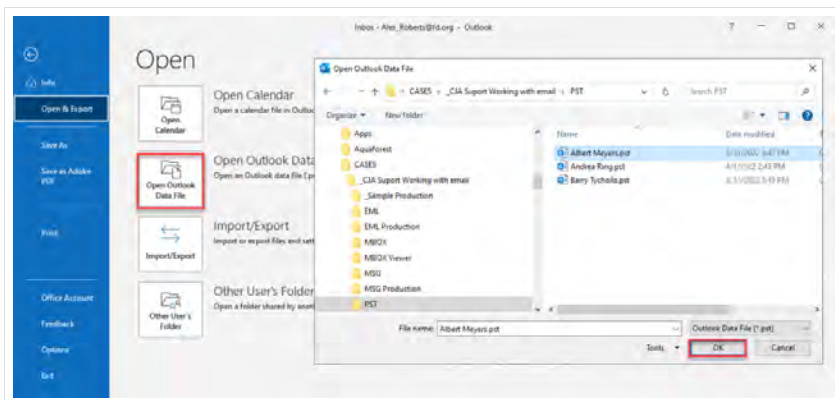


Figure 2-1

■ Example 2.2 – Viewing emails received in MBOX format using [Mozilla Thunderbird](#) with the [Import Export Tools](#) add-on:

The free 'Import Export Tools' add-on available for Mozilla Thunderbird allows for the import and viewing of MBOX files. After the add-on has been installed, right click on 'local folders', then choose 'Import mbox file' from the 'ImportExportTools NG' menu and navigate to the folder containing the MBOX file ([Figure 2-2](#)). This will copy the MBOX file into Thunderbird's 'Local Folders' where, similar to Outlook, you can conduct a review of the emails within.

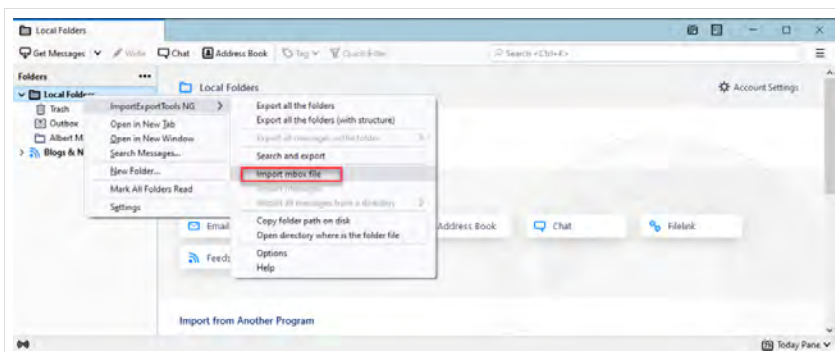


Figure 2-2

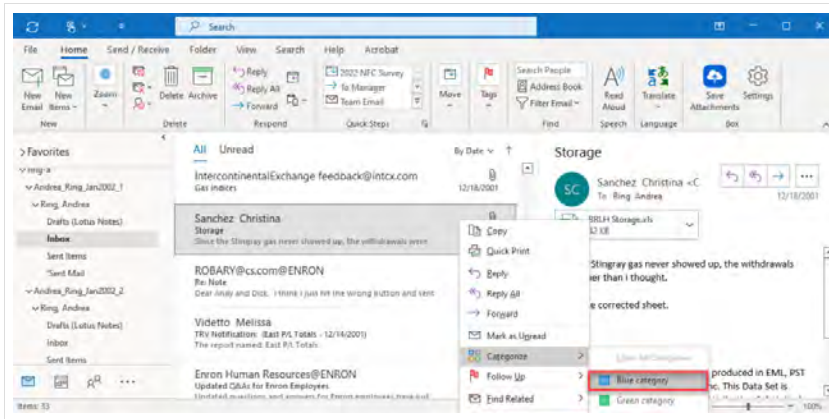
3. Search, tag, and convert emails

The approaches discussed in the two previous sections can be useful when you simply want to gain a high-level view of the emails, or

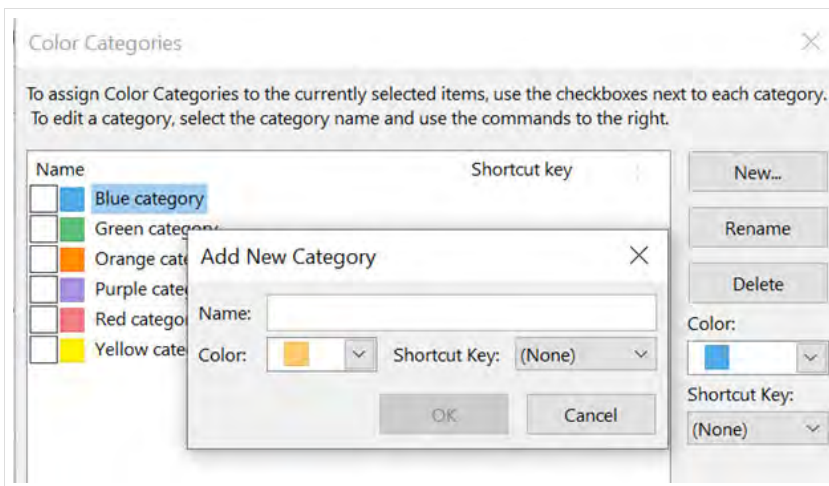
take a closer look at particular emails in a smaller collection. However, when you are working with large volumes of emails, manual review becomes impractical and inefficient, and taking advantage of the search and tag functionality of the available tools is a better approach.

▪ **Example 3 – Searching, tagging and exporting within MS Outlook:**

Outlook can be utilized to conduct key word searches, and relevant files can be tagged exported as either MSG or PDF files (using the Acrobat integration that is included with licensed copies of Acrobat Standard and Pro). To tag an email, right click and select 'Categories' then select a color coded tag (Figure 3-1). You can also customize the tags using the 'New Category' option within the 'Category' dialog box (Figure 3-2).



— Figure 3-1



— Figure 3-2

- You can then filter and tag a selection of emails (Figure 3-3) and save them to a folder as either individual MSG files or a new PST file. If you have a licensed version of Adobe Acrobat, there integration menu within Outlook can be used to convert messages into individual PDF's or a combined 'PDF Portfolio' (Figure 3-4).

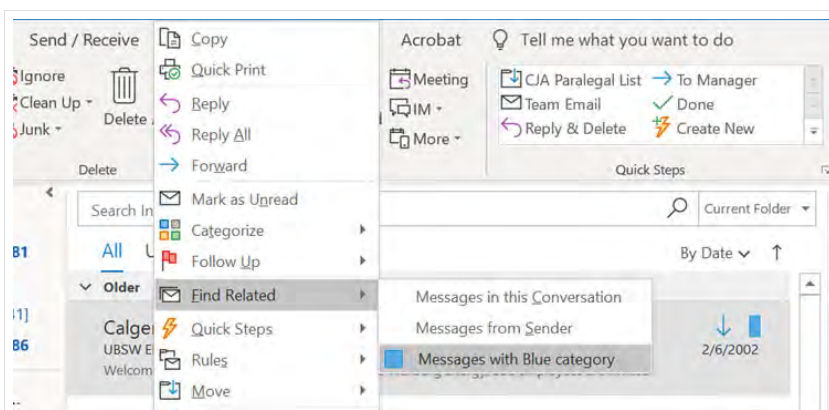


Figure 3-3

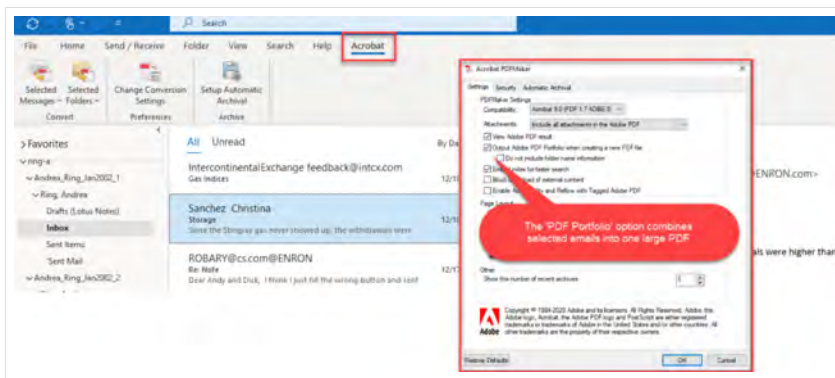


Figure 3-4

- When choosing an export format, be aware of the limitations of the different conversion formats. The HTML and PDF export formats typically will not include the complete email metadata. Email header information that may include important information like IP addresses used may be lost during conversion. Export formats including the MSG, EML, MBOX and PST retain much more of the original email metadata.

4. Working with email attachments.

Emails invariably have attachments, which, in addition to the body of the email can contain substantive relevant information. The programs discussed in this post vary greatly with how attachments are handled during format conversion. Be aware that some of the programs are not able to include the attachments when exporting to PDF. While PDFs are generally easier to add bates stamps to or turn into exhibits not all programs include the attachments..

- Example 4.1 – Exporting email with attachments using Mozilla Thunderbird with the Import Export Tools add-on:**

Thunderbird offers several export options including the ability to batch export relevant emails when using the Import Export Tools add-on. It **does not** have the ability to embed or append attachments when exporting messages to PDF, however it does allow for emails to be exported to the EML format (with attachments embedded) as well as an HTML format, which will include links to exported copies of the attachments (Figure 4-1).

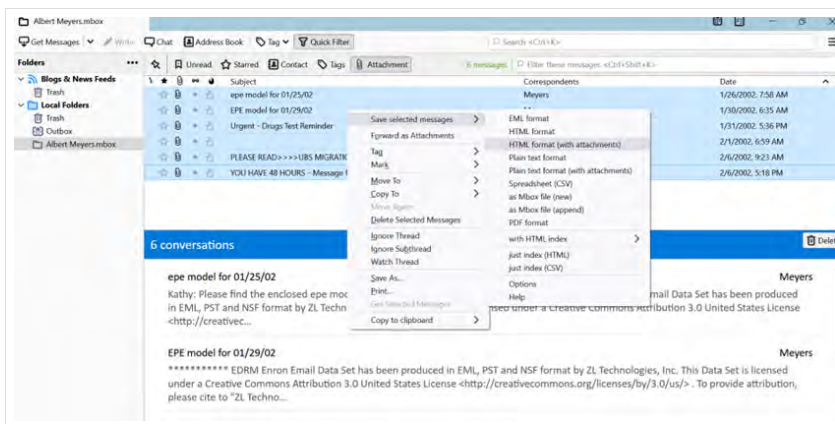
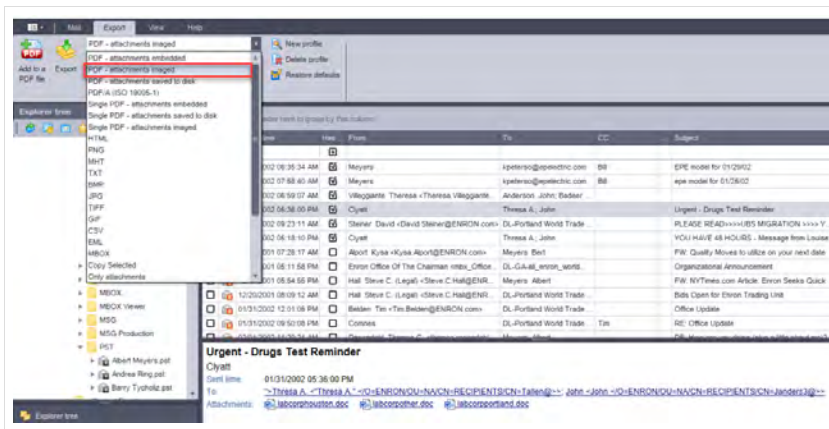


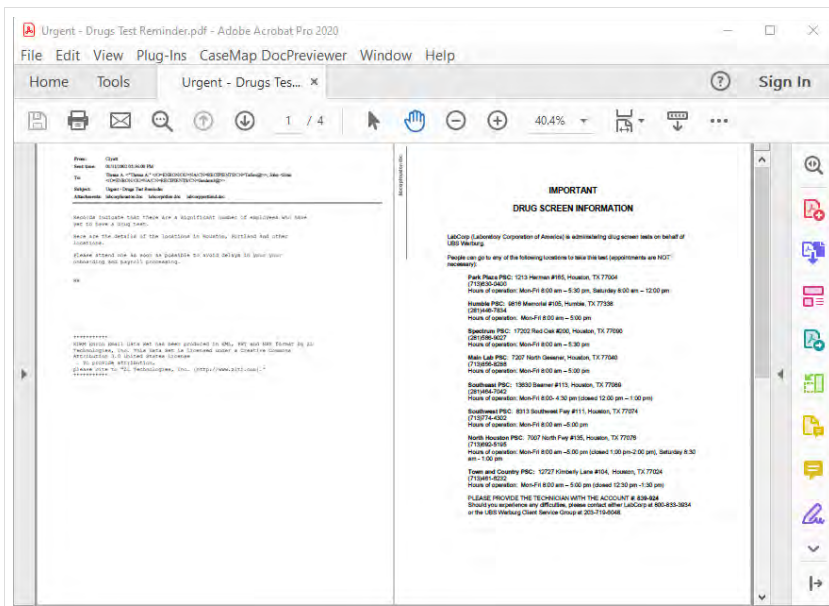
Figure 4-1

- Example 4.2 – Exporting email with attachments using PSTViewer Pro:**

PSTViewer Pro is yet another option for format conversion, and is a great tool to use in conjunction with tools like Thunderbird or Outlook. It can convert to many formats and includes some advanced PDF conversion options. When converting to PDF, attachments can either be embedded or “imaged” (Figure 4-2). The “imaged” option will convert supported attachments into PDF pages and appended them to the PDF version of the email (Figure 4-3).



— Figure 4-2



— Figure 4-3

Conclusion

As shown in this article there are a multiplicity of tools available to work with emails that are not universally compatible with all email formats and do not have the same functionality. This requires careful thought about how to leverage and integrate the tools. The best path forward through this thicket is to know what your goals are before you select your tool. Defining your goal early will help you select which tool or combination of tools you should use to develop an effective workflow that matches both the set of data you are working with and the needs of your case.

This entry was posted in [Email](#), [Software](#) and tagged [Acrobat](#), [Adobe](#), [email](#), [message](#) by [joewanzala](#). Bookmark the [permalink](https://nlsblog.org/2022/07/01/working-with-email-in-discovery-processing-options-and-review-workflows/) [\[https://nlsblog.org/2022/07/01/working-with-email-in-discovery-processing-options-and-review-workflows/\]](https://nlsblog.org/2022/07/01/working-with-email-in-discovery-processing-options-and-review-workflows/).

MEMORANDUM

SEAN BRODERICK, NATIONAL LITIGATION SUPPORT ADMINISTRATOR,
DEFENDER SERVICES OFFICE TRAINING DIVISION
FEDERAL PUBLIC DEFENDER
1301 CLAY STREET, SUITE 1350N
OAKLAND, CA 94612
TELEPHONE: (510) 637-3500

Date: June 11, 2018

To: Federal Public/Community Defenders
Panel Attorney District Representatives

From: Sean Broderick, National Litigation Support Administrator

Re: ***Services of Additional Coordinating Discovery Attorneys (CDAs) Available in Appropriate, Select Federal CJA Cases***

This memorandum is to advise you of the availability of five contractors to assist Criminal Justice Act (CJA) counsel with management of large volumes of e-discovery in selected federal CJA cases. Three new contractors, Angela Campbell, Julie de Almeida and John Ellis, Jr., are joining Russell M. Aoki and Emma M. Greenwood as national Coordinating Discovery Attorneys (CDAs) for the Defender Services program.

The National Litigation Support Team ([NLST](#)) is available for CJA panel attorneys and federal defender organization (FDO) staff to serve as a resource for e-discovery and litigation support aspects of their cases. As part of a set of national litigation support strategies approved by the Judicial Conference Committee on Defender Services and managed by the NLST, Coordinating Discovery Attorneys (CDAs) work with defense counsel on cases in which there are a large number of defendants, voluminous discovery, or complicated electronic discovery issues. Since the inception of the program in 2011, numerous panel attorneys, federal defenders and courts have found the CDA program helpful in addressing complex e-discovery cases. To meet the demand for CDA assistance, the Defender Services program has increased the number national CDAs from three to five.

The three new CDAs are Angela Campbell of Dickey and Campbell Law Firm PLC in Des Moines, IA, Julie de Almeida, in private practice in New York City, NY, and John C. Ellis, Jr., in private practice in San Diego, CA. All three lawyers have experience working on CJA cases, are knowledgeable about the types of software programs and vendor services available to assist in the management of discovery, and have been responsible for the effective use of technology and litigation support vendors to assist with the organization, search, review and analysis of e-discovery.

CDAs are federal criminal defense attorneys experienced managing large volumes of discovery and developing review strategies to improve attorney efficiency and effectiveness. CDAs address the timing of discovery productions, the format in which materials will be produced, the early identification of discovery production issues and ways to maintain the evidentiary integrity of discovery. CDAs can provide additional in-depth and significant hands-on assistance to CJA panel attorneys and FDO staff in cases that require technology and document

management expertise, including facilitating the implementation of the “Recommendations for Electronically Stored Information (ESI) Discovery Production in Federal Criminal Cases” ([Recommendations](#)). CDAs evaluate the level of computer sophistication of each lawyer and staff member; identify the types of discovery involved; assist in dialogue with the U.S. Attorney’s Office regarding the volume, form and timing of discovery productions (as explicitly encouraged in the Recommendations); assist in deciding how best to distribute the discovery; help determine what technology and other resources are necessary for discovery review and management; and aid in maintaining quality control of the discovery review process. By using a CDA, discovery is generally provided in a more useful form; one knowledgeable person assesses the case’s litigation support needs and assists counsel in obtaining the resources necessary to meet them; discovery is more effectively and efficiently tracked; the purchase of litigation support software, hardware, and services is more cost effective; discovery is provided in a more timely manner; and the overall case processing times and costs are likely to be reduced.

To contain costs and maximize benefits, the CDAs focus on a limited number of cases each year that have been identified as needing a CDA based on the complexity of the matter, the number of parties involved, or the nature and/or volume of the discovery. **If the court, a panel attorney or FDO is interested in utilizing the services of a CDA, one of the CJA attorneys in the case should first communicate with the NLST, whose contact information is listed at the end of this memorandum.** After an initial consultation with the NLST, and a second one with one of the CDAs, a decision will be made about the use of the CDA’s services in the subject case. Factors considered in determining whether a CDA will work on a particular case are:

- whether the number of co-defendants is so large as to create a risk of costly duplicative efforts, which could otherwise be eliminated or reduced upon the appointment of a CDA, or whether there are other factors that create a likelihood that the CDA’s participation would enable costs to be contained;
- whether the volume of discovery is so large that addressing the organizational needs in the case would interfere with defense counsel’s ability to address the legal and factual issues in a case;
- whether unusual organizational or technological issues exist, not commonly found even in complex cases, that would interfere with defense counsel’s ability to address the legal and factual issues in a case;
- whether the case is prosecuted in a region that lacks experts who can provide necessary technology support and document management expertise in addressing the factors described above;
- whether the timing of the request, which preferably should be made early in a case, is such that the CDA’s participation is likely to be of assistance to defense counsel, promote efficiency, and contain costs; and,
- the CDA’s workload.

Not all factors need be present to seek the services of the CDA. In determining how much weight to provide each factor, the seriousness of the alleged offense will be considered. The

National Litigation Support Administrator (NLSA) makes an initial decision as to whether to assign a CDA to assist on a case. After the NLSA determines that the services of a CDA would be of assistance, CJA counsel should petition the court ex parte for the appointment of the CDA to assist defense counsel. The petition must be submitted ex parte because of the need to describe possible discovery management strategies and potential future costs. The court's appointment of the CDA to work with all defense counsel in the case provides authority for the CDA to confer directly with the prosecution on issues of discovery, which allows for better coordination and overall cost-efficiencies regarding information exchange.

If you have any questions regarding the services of a CDA, please contact either Sean Broderick (National Litigation Support Administrator) or Kelly Scribner (Assistant National Litigation Support Administrator) at 510-637-3500, or by email: sean_broderick@fd.org, kelly_scribner@fd.org.

cc: Russell M. Aoki
Angela Campbell
Julie de Almeida
John C. Ellis, Jr.
Emma M. Greenwood



ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

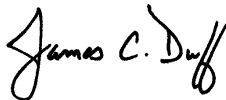
JAMES C. DUFF
Director

WASHINGTON, D.C. 20544

June 20, 2019

MEMORANDUM

To: Judges, United States District Courts
United States Magistrate Judges
Circuit Executives
Federal Public/Community Defenders
District Court Executives
Clerks, United States District Courts
Circuit CJA Case-Budgeting/CJA Supervising Attorneys
CJA Panel Attorney District Representatives

From: James C. Duff 

RE: MANAGING LARGE VOLUMES OF DISCOVERY IN FEDERAL CJA CASES
(INFORMATION)

This memorandum is to remind you of the services available from the Defender Services' National Litigation Support Team (NLST) for managing large volumes of discovery in federal Criminal Justice Act (CJA) cases.

NLST provides assistance to the Judiciary, CJA panel attorneys, and federal defender organizations (FDOs) on matters related to electronic discovery and litigation support. NLST is available to provide advice, make recommendations on funding requests involving e-discovery, and advise courts and parties about economical and practical solutions to e-discovery issues. See, *Guide to Judiciary Policy*, [Vol. 7A, § 320.70.40](#). NLST also provides training on various litigation support software programs, is familiar with effective ways to manage electronic discovery and leverage various litigation support software tools, and can provide guidance on how to utilize third party vendors in a cost-effective manner.

Attached is a description of two additional forms of assistance that are available to CJA counsel: Coordinating Discovery Attorneys (CDAs) and Casepoint. Both are part of a set of national litigation support strategies approved by the Judicial Conference Committee on Defender Services and managed by the NLST.

If you have any questions regarding NLST services, please contact Sean Broderick, National Litigation Support Administrator, or Kelly Scribner, Assistant National Litigation Support Administrator, at 510-637-3500, or by email at: Sean_Broderick@fd.org or Kelly_Scribner@fd.org.

Attachment

**Defender Services National Litigation Support Team:
Services for Managing Large Volumes of Discovery in Federal CJA Cases**

Coordinating Discovery Attorneys

Coordinating Discovery Attorneys (CDAs) work with defense counsel on cases in which there are a large number of defendants, voluminous data, or complicated electronic discovery issues. The five CDAs under contract with the Defender Services Office are **Russell M. Aoki** of Aoki Law PLLC in Seattle, Washington; **Angela Campbell** of Dickey and Campbell Law Firm PLC in Des Moines, Iowa; **Julie de Almeida**, in private practice in New York City, New York; **John C. Ellis, Jr.**, in private practice in San Diego, California; and **Emma M. Greenwood**, who is in private practice in New York, New Y. These attorneys have experience working on CJA cases and are knowledgeable about effective review strategies for the type of e-discovery prevalent in federal criminal cases. They have been appointed by district courts throughout the United States to serve as the CDA in complex criminal cases and in this capacity, have ensured that defense counsel have the necessary technology support to manage large volumes of discovery; assisted in controlling costs by seeking cost-sharing opportunities with the Government whenever possible; and made certain that vendors provide quality services at the best possible rates.

CDAs can provide additional in-depth and significant hands-on assistance to CJA panel attorneys and FDO staff in cases that require technology and document management expertise, including facilitating the implementation of the “[Recommendations for Electronically Stored Information \(ESI\) Discovery Production in Federal Criminal Cases](#)” (Recommendations). CDAs evaluate the level of computer sophistication of each lawyer and staff member; identify the types of discovery involved; assist in dialogue with the U.S. Attorney’s Office regarding the volume, form and timing of discovery productions (as explicitly encouraged in the Recommendations); assist in deciding how best to distribute the discovery; help determine what technology and other resources are necessary for discovery review and management; and aid in maintaining quality control of the discovery review process. By using a CDA, discovery is generally provided in a more useful form; one knowledgeable person assesses the case’s litigation support needs and assists counsel in obtaining the resources necessary to meet them; discovery is more effectively and efficiently tracked; the purchase of litigation support software, hardware, and services is more cost effective; discovery is provided in a more timely manner; and the overall case processing times and costs are likely to be reduced.

To contain costs and maximize benefits, the CDAs focus on a limited number of cases each year that have been identified as needing a CDA based on the complexity of the matter, the number of parties involved, or the nature and/or volume of the discovery. **If the court, a panel attorney or FDO is interested in utilizing the services of a CDA, one of the CJA attorneys in the case should first communicate with the NLST.** After an initial consultation with the

NLST, and a second one with one of the CDAs, a decision will be made about the use of the CDA's services in the subject case. Factors considered in determining whether a CDA will work on a particular case are:

- whether the number of co-defendants is so large as to create a risk of costly duplicative efforts, which could otherwise be eliminated or reduced upon the appointment of a CDA, or whether there are other factors that create a likelihood that the CDA's participation would enable costs to be contained;
- whether the volume of discovery is so large that addressing the organizational needs in the case would interfere with defense counsel's ability to address the legal and factual issues in a case;
- whether unusual organizational or technological issues exist, not commonly found even in complex cases, that would interfere with defense counsel's ability to address the legal and factual issues in a case;
- whether the case is prosecuted in a region that lacks experts who can provide necessary technology support and document management expertise in addressing the factors described above;
- whether the timing of the request, which preferably should be made early in a case, is such that the CDA's participation is likely to be of assistance to defense counsel, promote efficiency, and contain costs; and,
- the CDA's workload.

Not all factors need to be present to seek the services of the CDA. In determining how much weight to provide each factor, the seriousness of the alleged offense will be considered.

The National Litigation Support Administrator (NLSA) makes an initial decision as to whether to assign a CDA to assist on a case. After the NLSA determines that the services of a CDA would be of assistance, CJA counsel should petition the court to appoint the CDA to assist defense counsel in the particular case. The petition should be submitted ex parte because of the need to describe possible discovery management strategies and potential future costs. The court's appointment of the CDA to work with all defense counsel in the case provides authority for the CDA to confer directly with the prosecution on issues of discovery, which allows for better coordination and overall cost-efficiencies regarding information exchange. If the motion is granted, the services for CDAs and their staff are paid by the NLST. If the CDA determines that the assistance of a third party vendor would be beneficial, the CDA will file a funds request with the district court on behalf of CJA panel counsel for the assistance. Before such a request, CJA panel counsel are polled to see if they believe the services are needed for the case.

Online Document Review Platform (Casepoint)

Casepoint is an online document review platform that can be useful in cases with voluminous discovery, multi-defendant cases, and cases where the defense team members are in different locations. (NOTE: A document review platform uses a database and other tools to facilitate the capture, organization, review and analysis of e-discovery. As mentioned in the [Criminal e-Discovery: A Pocket Guide for Judges](#), a document review platform can be useful in federal criminal cases.¹) The Defender Services Office has a contract with Casepoint LLC to use its online, e-Discovery platform. Casepoint includes computerized early case assessment, technology assisted review (TAR), and data processing. The platform has an easy-to-use interface which makes it accessible to all end users, from novice users to legal professionals who are experienced with other document review platforms.

Casepoint is designed to assist attorneys and their staff in organizing, managing and analyzing large volumes of discovery. Using a secure, hosted document review platform such as Casepoint is advantageous in multi-defendant cases with large volumes of information. Case materials are located in one central repository and easily reviewed, tagged and accessed by all defense teams from wherever they are as long as they have an internet connection. This greatly alleviates the need for panel attorneys to have specific hardware, software or IT support usually necessary to utilize similar review platforms on a local office network. Along with the online document review platform, Casepoint, LLC provides project management expertise and training for all users of the system.

Casepoint and other legal review platforms are different from online storage services such as Box.com and Dropbox, in that its database allows for better organization, greater search capabilities and greater capability to work collaboratively with other members of the defense team. In multi-defendant cases, all parties can share a single repository and still maintain their own work product such as notes pertaining to a particular document, in a private area not accessible by the other parties. Not only can a web-hosted platform be available to attorneys and their immediate staff, parts of the database can also be provided to experts and others working on the case who need to only look at select materials as set aside by the defense team.

For additional information, please contact Sean Broderick, National Litigation Support Administrator, or Kelly Scribner, Assistant National Litigation Support Administrator, at 510-637-3500, or by email at: Sean_Broderick@fd.org or Kelly_Scribner@fd.org.

¹ Published by the FJC, *Criminal e-Discovery: A Pocket Guide for Judges* is a resource for judges and lawyers working on federal criminal cases who need guidance on how best to address e-discovery issues.

MEMORANDUM

SEAN BRODERICK, NATIONAL LITIGATION SUPPORT ADMINISTRATOR
DEFENDER SERVICES OFFICE TRAINING DIVISION
FEDERAL PUBLIC DEFENDER
1301 CLAY STREET, SUITE 1350N
OAKLAND, CA 94612
TELEPHONE: (510) 637-1950

Date: February 29, 2020

To: CJA Panel Attorneys

From: Sean Broderick, National Litigation Support Administrator

Re: ***New Rule relevant to Criminal e-Discovery: Rule 16.1 Pretrial Discovery Conference;
Request for Court Action***

This memorandum is to provide you background on the new Federal Rules of Criminal Procedure, Rule 16.1 which took effect in December 2019. Attached to this memo is an excerpt from the 4/25/2019 congressional rules package regarding Rule 16.1 (which provides context to the rule and the committee note on the proposed rule).

What is the new rule?

The Judicial Conference Advisory Committee on Criminal Rules proposed a new rule to address the issue of electronic discovery production. Rule 16.1 provides that within 14 days after the arraignment, the attorneys for the government and the defendant **must** confer and try to agree on a timetable and procedures for pretrial disclosure under Rule 16. Subsection (b) of the proposed rule would allow one or more parties to request that the court modify the timing, manner, or other aspects of the disclosure to facilitate trial preparation. In addition, the Committee Note for the new rule directs that counsel “should be familiar with best practices” and cites the *Recommendations for Electronically Stored Information (ESI) Discovery Production in Federal Criminal Cases*, also known as the ESI Protocol, as an example of these best practices. The Advisory Committee on Criminal Rules included the reference to the ESI protocol for the express purpose of bringing it to the attention of both courts and practitioners.

What is the ESI Protocol?

The ESI Protocol promotes early conferences with the Government to ensure discovery is produced in a usable format. An early meet-and-confer is a valuable opportunity, because voluminous e-discovery cases present difficult challenges for both prosecutors and defense counsel. Missteps at the outset are costly to unwind or correct, and waste time and money. To get the parties to address e-discovery issues early, the ESI Protocol recommends three steps:

- 1) at the outset, the parties should meet and confer about the nature, volume, and mechanics of producing e-discovery;
- 2) at the meet-and-confer, the parties should address what is being produced, a table of contents of the discovery, the forms of production, volume, software and hardware

limitations, inspection of seized hardware, and a reasonable schedule for producing e-discovery; and

- 3) the producing party should transmit its e-discovery in sufficient time to permit reasonable management and review, and the receiving party should be proactive about testing the accessibility of the ESI when received.

Resource

An excellent resource for you and other CJA panel attorneys to review is the Criminal e-Discovery: A Pocket Guide for Judges (can be found here:

https://www.fd.org/sites/default/files/litigation_support/pocket-guide_criminal-e-discovery.pdf.)

Written for judges, it provides guidance on common e-discovery issues in CJA cases including providing questions that judges may ask at an e-discovery status conference. There are several quotes I could reference from the pocket guide, but if I had to choose one, I would point out this: “[t]o benefit from the information available in e-discovery, attorneys must know what format the original data was in, what formatting options are available, and how those options affect their potential review of the data. Attorneys who do not understand the various formats should consult with a litigation support or IT expert before receiving or processing their e-discovery.” (page 15-16 of Criminal e-Discovery Pocket Guide).

This rule is not a panacea to problems associated with e-discovery. Unfortunately, with the complexity of e-discovery and digital evidence, there isn’t just a form letter that people can submit to the government and expect to get e-discovery in an easy form to review and digest. There is too much complexity in cases, and too many variables to consider. But I believe that this new rule provides an opportunity to develop better processes to get a handle on e-discovery productions you will be getting in your cases.

April 25, 2019

SUPREME COURT OF THE UNITED STATES

ORDERED:

1. The Federal Rules of Criminal Procedure are amended to include new Rule 16.1.
2. The Rules Governing Section 2254 Cases in the United States District Courts are amended to include an amendment to Rule 5.
3. The Rules Governing Section 2255 Proceedings for the United States District Courts are amended to include an amendment to Rule 5.

[*See infra* pp. __ __ __.]

4. The foregoing amendments to the Federal Rules of Criminal Procedure, the Rules Governing Section 2254 Cases in the United States District Courts, and the Rules Governing Section 2255 Proceedings for the United States District Courts shall take effect on December 1, 2019, and shall govern in all proceedings thereafter commenced and, insofar as just and practicable, all proceedings then pending.

5. THE CHIEF JUSTICE is authorized to transmit to the Congress the foregoing amendments to the Federal Rules of Criminal Procedure, the Rules Governing Section 2254 Cases in the United States District Courts, and the Rules Governing Section 2255 Proceedings for the United States District Courts in accordance with the provisions of Section 2074 of Title 28, United States Code.

**PROPOSED AMENDMENTS TO THE
FEDERAL RULES OF CRIMINAL PROCEDURE**

Rule 16.1. Pretrial Discovery Conference; Request for Court Action

- (a) Discovery Conference.** No later than 14 days after the arraignment, the attorney for the government and the defendant's attorney must confer and try to agree on a timetable and procedures for pretrial disclosure under Rule 16.
- (b) Request for Court Action.** After the discovery conference, one or both parties may ask the court to determine or modify the time, place, manner, or other aspects of disclosure to facilitate preparation for trial.

REPORT OF THE JUDICIAL CONFERENCE

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

**TO THE CHIEF JUSTICE OF THE UNITED STATES AND MEMBERS OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES:**

* * * * *

FEDERAL RULES OF CRIMINAL PROCEDURE

Rules Recommended for Approval and Transmission

The Advisory Committee on Criminal Rules submitted a proposed new Criminal Rule 16.1, and amendments to Rule 5 of the Rules Governing Section 2254 Cases in the United States District Courts and Rule 5 of the Rules Governing Section 2255 Proceedings for the United States District Courts, with a recommendation that they be approved and transmitted to the Judicial Conference.

New Rule 16.1 (Pretrial Discovery Conference; Request for Court Action)

The proposed new rule originated with a suggestion that Rule 16 (Discovery and Inspection) be amended to address disclosure and discovery in complex cases, including cases involving voluminous information and ESI. While the subcommittee formed to consider the suggestion determined that the original proposal was too broad, it determined that a need might exist for a narrower, targeted amendment. A mini-conference was held in Washington, D.C. on February 7, 2017. Participants included criminal defense attorneys from both large and small firms, public defenders, prosecutors, Department of Justice attorneys, discovery experts, and judges. Consensus developed during the mini-conference regarding what sort of rule was needed. First, the rule should be simple and place the principal responsibility for implementation

Excerpt from the September 2018 Report of the Committee on Rules of Practice and Procedure

on the lawyers. Second, it should encourage the use of the ESI Protocol.¹ Participants did not support a rule that would attempt to specify the type of case in which this attention was required. The prosecutors and Department of Justice attorneys also felt strongly that any rule must be flexible given the variation among cases.

Guided by the discussion and feedback received at the mini-conference, as well as examples of existing local rules and orders addressing ESI discovery, the subcommittee drafted proposed new Rule 16.1. Because it addresses activity that is to occur well in advance of discovery, shortly after arraignment, the subcommittee concluded it warrants a separate position in the rules. A separate rule will also draw attention to the new requirement.

The proposed rule has two sections. Subsection (a) requires that, no later than 14 days after the arraignment, the attorneys for the government and defense must confer and try to agree on the timing and procedures for disclosure. Subsection (b) states that after the discovery conference the parties may “ask the court to determine or modify the timing, manner, or other aspects of disclosure to facilitate preparation for trial.” The phrase “determine or modify” contemplates two possible situations. First, if there is no applicable order or rule governing the schedule or manner of discovery, the parties may ask the court to “determine” when and how disclosures should be made. Alternatively, if the parties wish to change the existing discovery schedule, they must seek a modification. In either situation, the request to “determine or modify” discovery may be made jointly if the parties have reached agreement, or by one party. The proposed rule does not require the court to accept the parties’ agreement or otherwise limit

¹The “ESI Protocol” is shorthand for the “Recommendations for Electronically Stored Information (ESI) Discovery Production in Federal Criminal Cases” published in 2012 by the Department of Justice and the Administrative Office in connection with the Joint Working Group on Electronic Technology in the Criminal Justice System.

Excerpt from the September 2018 Report of the Committee on Rules of Practice and Procedure

the court’s discretion. Courts retain the authority to establish standards for the schedule and manner of discovery both in individual cases and through local rules and standing orders.

Because technology changes rapidly, the proposed rule does not attempt to specify standards for the manner or timing of disclosure in cases involving ESI. The committee note draws attention to this point and states that counsel “should be aware of best practices” and cites the ESI Protocol.

Six public comments were submitted, and each comment supported the general approach of requiring the prosecution and defense to confer. The Advisory Committee made some changes in response to concerns raised by the comments. First, the Advisory Committee agreed to revise proposed Rule 16.1(b)’s reference to “timing, manner, or other aspects of disclosure” to mirror Rule 16(d)(2)(A)’s reference to “time, place, or manner, or other terms and conditions of disclosure.” Second, the Advisory Committee emphasized in the committee note that the proposed rule does not modify statutory safeguards. Finally, in response to two comments that addressed the applicability of the proposed rule to pro se parties, the Advisory Committee made two changes: amending the rule to make it clearer that government attorneys are not required to meet with pro se defendants; and adding to the committee note a statement about the courts’ existing discretion to manage discovery and their responsibility to ensure that pro se defendants “have full access to discovery.” The Advisory Committee also made several non-substantive changes recommended by the Committee’s style consultants.

Rule 5 of the Rules Governing Section 2254 Cases in the United States District Courts and Rule 5 of the Rules Governing Section 2255 Proceedings for the United States District Courts (The Answer and Reply)

Proposed amendments to Rule 5(e) of the Rules Governing Section 2254 Cases in the United States District Courts and Rule 5(d) of the Rules Governing Section 2255 Proceedings for

Excerpt from the September 2018 Report of the Committee on Rules of Practice and Procedure

the United States District Courts make clear that the petitioner has an absolute right to file a reply.

As previously reported, a member of the Standing Committee drew the Advisory Committee's attention to a conflict in the case law regarding Rule 5(d) of the Rules Governing Section 2255 Proceedings. That rule – as well as Rule 5(e) of the Rules Governing Section 2254 Cases – provides that the petitioner/moving party “may submit a reply . . . within a time period fixed by the judge.” Although the committee note and history of the rule make clear that this language was intended to give the petitioner a right to file a reply, the Advisory Committee determined that the text of the rule itself has contributed to a misreading of the rule by a significant number of district courts. Some courts have interpreted the rule as affording a petitioner the absolute right to file a reply. Other courts have interpreted the reference to filing “within a time fixed by the judge” as allowing a petitioner to file a reply only if the judge determines a reply is warranted and sets a time for filing.

The proposed amendments confirm that the moving party has a right to file a reply by placing the provision concerning the time for filing in a separate sentence, providing that the moving party or petitioner “may file a reply to the respondent's answer or other pleading. The judge must set the time to file, unless the time is already set by local rule.” The committee note states that the proposed amendment “retains the word ‘may,’ which is used throughout the federal rules to mean ‘is permitted to’ or ‘has a right to.’” The proposal does not set a presumptive time for filing, recognizing that practice varies by court, and the time for filing is sometimes set by local rule.

Three comments were submitted, two of which addressed issues fully considered before publication: the need for an amendment, and whether to replace “may” with a phrase such as

Excerpt from the September 2018 Report of the Committee on Rules of Practice and Procedure

“has a right to” or “is entitled to.” The Advisory Committee considered these two issues at length prior to publication and determined not to revisit the Advisory Committee’s resolution.

A third comment supported the proposal but suggested additional rule amendments that would require that inmates be informed about the reply and when it should be filed at the time the court orders the respondent to file a response. Although the Advisory Committee declined to expand the scope of the proposed amendments to the rules, it did approve the addition of the following sentence to the committee notes: “Adding a reference to the time for filing of any reply to the order requiring the government to file an answer or other pleading provides notice of that deadline to both parties.” In the Advisory Committee’s view, this additional language will serve as a helpful reinforcement of best practices.

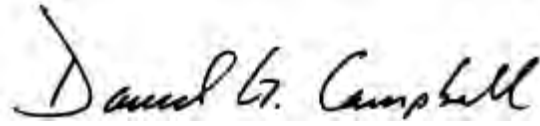
The Standing Committee voted unanimously to adopt the recommendations of the Advisory Committee. The proposed amendments to the Federal Rules of Criminal Procedure, the Rules Governing Section 2254 Cases in the United States District Courts, and the Rules Governing Section 2255 Proceedings for the United States District Courts and committee notes are set forth in Appendix C, with an excerpt from the Advisory Committee’s report.

Recommendation: That the Judicial Conference approve proposed new Criminal Rule 16.1 and proposed amendments to Rule 5 of the Rules Governing Section 2254 Cases in the United States District Courts and Rule 5 of the Rules Governing Section 2255 Proceedings for the United States District Courts as set forth in Appendix C and transmit them to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

* * * * *

Excerpt from the September 2018 Report of the Committee on Rules of Practice and Procedure

Respectfully submitted,

A handwritten signature in black ink that reads "David G. Campbell". The signature is written in a cursive style with a large initial 'D'.

David G. Campbell, Chair

Jesse M. Furman
Daniel C. Girard
Robert J. Giuffra Jr.
Susan P. Graber
Frank M. Hull
Peter D. Keisler

William K. Kelley
Carolyn B. Kuhl
Rod J. Rosenstein
Amy J. St. Eve
Srikanth Srinivasan
Jack Zouhary

Excerpt from the May 17, 2018 Report of the Advisory Committee on Criminal Rules

**COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544**

DAVID G. CAMPBELL
CHAIR

REBECCA A. WOMELDORF
SECRETARY

CHAIRS OF ADVISORY COMMITTEES

MICHAEL A. CHAGARES
APPELLATE RULES

SANDRA SEGAL IKUTA
BANKRUPTCY RULES

JOHN D. BATES
CIVIL RULES

DONALD W. MOLLOY
CRIMINAL RULES

DEBRA ANN LIVINGSTON
EVIDENCE RULES

MEMORANDUM

TO: Hon. David G. Campbell, Chair
Committee on Rules of Practice and Procedure

FROM: Hon. Donald W. Molloy, Chair
Advisory Committee on Criminal Rules

RE: Report of the Advisory Committee on Criminal Rules

DATE: May 17, 2018

I. Introduction

The Advisory Committee on Criminal Rules met on April 24, 2018, in Washington, D.C. This report presents two action items. The Committee unanimously recommends that the Standing Committee transmit to the Judicial Conference the following proposed amendments that were previously published for public comment:

- (1) New Rule 16.1 (pretrial discovery conference), and
- (2) Amendments to Rule 5 of the Rules Governing Section 2254 Cases and Rule 5 of the Rules Governing Section 2255 Proceedings (right to file a reply).

* * * * *

Report to the Standing Committee
Advisory Committee on Criminal Rules
May 17, 2018

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II. Action Item: New Rule 16.1

Proposed new Rule 16.1 has its origins in a request from the National Association of Criminal Defense Lawyers (NACDL) and the New York Council of Defense Lawyers (NYCDL) that the Committee address discovery problems in complex cases that involve “millions of pages of documentation,” “thousands of emails,” and “gigabytes of information.” The Committee’s work on the proposal revealed that discovery issues involving electronically stored information (ESI) could be adequately addressed in most cases by an early discussion between counsel, and were not limited to “complex” cases, or cases with a high volume of ESI. Accordingly, the proposed rule is not limited to such cases, and provides a process that encourages the parties to confer early in each case to determine whether the standard discovery procedures should be modified.

The proposed amendment is not included in Rule 16 itself, but would instead be a new Rule 16.1. Because it addresses activity that is to occur well in advance of discovery, shortly after arraignment, the Committee concluded it warrants a separate position in the rules. A separate rule will also draw attention to the new requirement.

The new rule has two sections.

The first section requires that no later than 14 days after arraignment the attorneys for the government and defense must confer and try to agree on the timing and procedures for disclosure. Members agreed that 14 days was an appropriate period, noting that the proposal permits flexibility. Because the proposed rule requires a meeting “no later than” 14 days after arraignment, it permits the parties to meet before arraignment when that would be desirable. And in cases in which 14 days is not sufficient for the parties to accurately gauge what discovery may entail, the rule requires no more than an initial discussion, which can then be followed by additional conversations. Subsection (b) bears some resemblance to Civil Rule 26(f), but is more narrowly focused than the Civil Rule.

The second section states that after the discovery conference the parties may “ask the court to determine or modify the timing, manner, or other aspects of disclosure to facilitate preparation for trial.” The phrase “determine or modify” contemplates two possible situations. First, if there is no applicable order or rule governing the schedule or manner of discovery, the parties may ask the court to “determine” when and how disclosures should be made. Alternatively, if the parties wish to change the existing discovery schedule, they must seek a modification. A modification would be required, for example, if the schedule or manner of discovery in the case is governed by a standing order or local rule. In either situation, the request to “determine or modify” discovery may be made jointly if the parties have reached agreement, or by one party alone if no agreement has been reached. The rule does not prescribe a time period for seeking judicial assistance.

The proposed rule requires the parties to confer and authorizes them to seek an order from the court governing the manner, timing and other aspects of discovery. But it does not require the

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court to accept their agreement or otherwise limit the court’s discretion. Under the proposed rule, district courts retain the authority to establish standards for the schedule and manner of discovery both in individual cases and through local rules and standing orders. To avoid any confusion, this point is emphasized in the Committee Note, which states: “Moreover, the rule does not displace local rules or standing orders that supplement its requirements or limit the authority of the court to determine the timetable and procedures for disclosure.”

Because technology changes rapidly, the proposed rule does not attempt to specify standards for the manner or timing of disclosure in cases involving electronically stored information (ESI). The Committee Note draws attention to this point and states that counsel “should be aware of best practices.” As an example of these best practices, it cites the ESI protocol developed by the Department of Justice, the Administrative Office of the U.S. Courts, and the Joint Working Group on Electronic Technology in the Criminal Justice System (JETWG) (Recommendations for Electronically Stored Information (ESI) Discovery Production in Federal Criminal Cases (2012)). The Committee hopes that including the reference to this protocol will help bring it to the attention of both courts and practitioners.

Publication of the rule produced six comments. Although all were supportive of (or did not question) the amendment’s general approach of requiring the prosecution and defense to confer about discovery soon after arraignment, several expressed concerns and/or suggested changes in the text or Committee Note. The comments raised the following issues:

- (1) Should the text or note state that the amendment does not preclude shorter times for discovery required by local court rules or court orders?
- (2) Should the text or note be amended to state that the amendment does not grant new discovery authority or override current statutory limitations (e.g., the Classified Information Procedures Act (CIPA) and the Jencks Act)?
- (3) Should the rule explicitly state that it does not apply to pro se defendants?
- (4) Should the amendment be relocated or renumbered?
- (5) Should the rule require the parties to confer “in good faith”?
- (6) Should the rule require the parties to file a joint discovery report?

The Committee concluded that the existing Committee Note was sufficient to address the concern about local rules and orders setting shorter times for discovery, but it agreed to propose revisions to the Note addressing statutory limitations such as CIPA and the applicability of the rule to pro se defendants. It also accepted the suggestion that the wording of subsection (b) should be revised to parallel Rule 16(d)(2)(A). With the exception of a few minor changes recommended by the style consultants, the Committee declined to make other changes in the rule as published.

a. Local rules

Two comments (CR-2017-0009 and CR-2017-0011) expressed concern about the effect of the proposed rule in districts where local rules already require the government to make specific disclosures at particular times, especially where those disclosures must be made before the time

Excerpt from the May 17, 2018 Report of the Advisory Committee on Criminal Rules

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set for the pretrial discovery conference (14 days after arraignment). The comments suggested changes to the text or Committee Note. In the drafting process the Committee sought to preserve the authority of district courts to impose additional discovery requirements by local rule or court order. As published, the Committee Note states (emphasis added):

The rule states a general standard that the parties can adapt to the circumstances. Simple cases may require only a brief informal conversation to settle the timing and procedures for discovery. Agreement may take more effort as case complexity and technological challenge increase. Moreover, the rule does not displace local rules or standing orders that supplement its requirements or limit the authority of the district court to determine the timetable and procedures for disclosure.

The Committee concluded that no further clarification is needed, in either the text or the Committee Note, to respond to the concerns about local rules requiring early disclosures.

b. New discovery authority

The Department of Justice (CR-2017-0010) expressed concern that the language in (b) might be read to “grant[] new discovery authorities that could cause serious problems and undermine important protections contained in other laws.” As published, (b) provided (emphasis added):

(b) Modification of Discovery. After the discovery conference, one or both parties may ask the court to determine or modify the timing, manner, or other aspects of disclosure to facilitate preparation for trial.

The Department noted that this language varies slightly from current Rule 16(d)(2)(A).

The Committee agreed to conform the language of the proposed rule to the phrasing of Rule 16(1)(b). There is no substantive difference between the phrasing used in the rule as published (“the timing, manner, or other aspect of disclosure”) and the parallel words in Rule 16 (“time, place, or manner, or other terms and conditions of disclosure”). Although it seems unlikely that these slight differences would form the basis for a successful argument that Rule 16.1 was intended to be different in some important respect, the Committee had no objection to tracking the phrasing of Rule 16(d)(2)(A) in new Rule 16.1(b). As revised, the proposed rule provides:

After the discovery conference, one or both parties may ask the court to determine or modify the ~~timing, manner, or other aspect of disclosure~~ time, place, or manner, or other terms and conditions of disclosure to facilitate preparation for trial.

The Department also suggested that the text of the rule be amended to state that the court may determine or modify the disclosure “in accordance with Rule 16 and other applicable law,” and that the following language be added to the Committee Note:

Excerpt from the May 17, 2018 Report of the Advisory Committee on Criminal Rules

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. . . nothing in this new rule is designed to change substantive discovery rules, grant the courts authorities in addition to what is provided for under Rule 16 and other applicable law, or change the safeguards provided in various security and privacy laws such as the Jencks Act or the Classified Information Procedures Act ("CIPA").

In its comment on the rule, NACDL (CR-2017-0012) opposed that suggested change, praising the flexibility of the rule as published and stating its understanding that the rule “rightly empower[s] trial judges to demand that the government provide discovery that is timely, complete and accessible to the defense, according to the particular nature and circumstances of any given case.”

The Committee did not accept the Department’s suggestion that the text of the rule be revised to add references to Rule 16 “and other applicable law.” Adding a requirement that the court must act “in accordance with . . . other applicable law” to this rule might suggest that unless the same language is added to other rules the courts have carte blanche to ignore other relevant laws. The style consultants were unanimous in rejecting this language.

The Committee agreed, however, that it would be appropriate to add language to the Committee Note addressing the Department’s concern by recognizing the limited nature of the new rule. The placement of the new language (underlined below) shows that the new rule alters neither existing statutory safeguards for security and privacy, nor local rules or standing orders:

The rule states a general standard that the parties can adapt to the circumstances. Simple cases may require only a brief informal conversation to settle the timing and procedures for discovery. Agreement may take more effort as case complexity and technological challenge increase. Moreover, the rule does not modify statutory safeguards provided in security and privacy laws such as the Jencks Act or the Classified Information Procedures Act, nor does it displace local rules or standing orders that supplement its requirements or limit the authority of the district court to determine the timetable and procedures for disclosure.

c. Pro se parties

Two comments addressed the application of the amendment to pro se parties, though they disagreed on the proper approach. The Department of Justice (CR-2017-0010) suggested that the Committee Note squarely address the point, implicit in the text, that the requirement of a pretrial conference is applicable only to attorneys and hence not to pro se defendants. NACDL (CR-2017-0010) disagreed, suggesting that “‘attorney for the defendant’ is properly understood to include defendants representing themselves.” Further, NACDL argued, the Committee Note should confirm this understanding. It observed that where conferring with a pro se defendant would be impractical, the government can seek relief on a case-by-case basis.

These comments squarely presented for Committee discussion the question whether the prosecution should have a duty to confer with a pro se defendant concerning discovery within 14 days after arraignment, assuming that it would be feasible to do so. On the one hand, most pro se

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defendants lack the training and experience to understand the discovery process, and conferring in such circumstances would often be difficult. On the other hand, cases involving pro se defendants may include quantities of ESI, and such defendants—even more than those represented by counsel—have a very significant interest in the timing and form of discovery.

The Committee again concluded, consistent with its assumption prior to publication, that for a variety of practical reasons it would not be appropriate to require the government to confer about discovery with each pro se defendant within 14 days of arraignment, and that the text should make this point more clearly. As published subsection (a) required “the attorneys for the government and the defendant” to confer and try to agree on the timetable and procedures for pretrial disclosures. As revised, subsection (a) refers to “the attorney for the government and the defendant’s attorney.”

Although the Committee agreed that it is not practical to require discovery conferences with pro se defendants, it also recognized that it is essential for such defendants to have pretrial access to material necessary to prepare their defense. To emphasize this point, the Committee unanimously supported adding to the Committee Note a statement about the courts’ existing discretion to manage discovery and their responsibility to ensure pro se defendants “have full access to discovery.” An addition to the Committee Note reads:

For practical reasons, the rule does not require attorneys for the government to confer with defendants who are not represented by counsel. However, neither does the rule limit existing judicial discretion to manage discovery in cases involving pro se defendants, and courts must ensure such defendants have full access to discovery.

d. Relocating or renumbering the amendment

Two comments addressed the location of the new provision. The Justice Department suggested that it might be desirable to delete subsection (b) and move the new provision imposing a duty to confer to Rule 16. A Concerned Citizen suggested (CR-2017-005), instead, that the new rule come after Rule 10 (arraignment) and before Rule 16 (discovery). This would, Concerned Citizen urged, preserve the present order of the rules, which follows the chronology of the typical criminal case. Citizen favored placing the new rule between Rules 11 and 12.

The Committee concluded that no change should be made in the numbering or location of the rule. A new, separate rule will be much more visible than placement within Rule 16, which is already very long and complex. A simple freestanding rule also parallels Rule 17. The Committee saw no reason to relocate the new rule.

e. Additional requirements of good faith and joint discovery reports

One commentator, Professor Daniel McConkie (CR-2017-0007), suggested that Rule 16.1, like the Civil Rules, should expressly impose the requirement of conferring in “good faith.” He

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noted that there are situations in which one party is not engaged and the other party “needs the ability to file a motion with some teeth to call out that bad behavior.” In the drafting process the Committee considered including a good faith requirement, but it declined to do so. Indeed, members noted that discovery in criminal cases currently proceeds more smoothly than it does in civil cases, despite the explicit requirement of “good faith.”

Professor McConkie also described local rules that require both discovery conferences and pretrial joint discovery reports, and he urged the Committee to add similar provisions to Rule 16.1. Although the Committee did not specifically consider the requirement of a joint defense report, in the drafting process it did consider—and decided against—more detailed requirements beyond conferring within 14 days after arraignment. Members were not persuaded that it would be desirable to add such a requirement.

f. Style changes

The Committee accepted several changes recommended by the style consultants, which did not affect the substance of the proposed rule.

The consultants recommended changes in the captions to more accurately reflect the subject of subsection (b). The revised caption is “Request for Court Action.”

The consultants recommended the text in subsection (a) refer, for clarity, to “the attorney for the government and the defendant’s attorney” rather than the “the attorneys for the government and the defendant.”

Finally, the consultants recommended the deletion of a comma.

The Committee unanimously recommends that the Standing Committee approve new Rule 16.1 and the accompanying Committee Note, as amended after publication, for transmittal to the Judicial Conference.

III. Action Item: Rule 5(d) of the Rules Governing Section 2255 Proceedings and Rule 5(e) of the Rules Governing Section 2254 Cases

Judge Richard Wesley first drew the Committee’s attention to a conflict in the cases construing Rule 5(d) of the Rules Governing § 2255 Proceedings. The Rule states that “The moving party may submit a reply to the respondent’s answer or other pleading within a time fixed by the judge.” Although the Committee Note and history of the amendment make it clear that this language was intended to give the inmate a right to file a reply, some courts have held that the inmate who brings the § 2255 action has no right to file a reply, but may do so only if permitted by the court. Other courts do recognize this as a right.

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After a review of the cases, the Committee concluded that the text of the current rule is contributing to a misreading of the rule by a significant number of district courts. A similar problem was found in cases interpreting parallel language in Rule 5(e) of the Rules Governing 2254 actions. Both rules currently provide that a prisoner may file a reply “within a time fixed by the judge.” Apparently the reference to filing “within a time fixed by the judge” can be read as allowing a prisoner to file a reply only if the judge determines a reply is warranted and sets a time for filing.

The amendment published for public comment makes it clear that the moving party (or petitioner in 2254 cases) has a right to file a reply by placing the provision concerning the time for filing in a separate sentence:

The moving party may file a reply to the respondent’s answer or other pleading. The judge must set the time to file, unless the time is already set by local rule.

The Committee Note states that the Rule “retains the word ‘may,’ which is used throughout the federal rules to mean ‘is permitted to’ or ‘has a right to.’”

A parallel amendment for Rule 5(e) of the Rules Governing 2254 Proceedings was also published for public comment. Although the case brought to the Committee by Judge Wesley concerned Rule 5 of the Rules Governing Section 2255 Proceedings, the Committee concluded that parallel treatment was warranted. The Committee that revised the amendments saw no reason to treat them differently, the same division of authority appears in both Section 2254 and 2255 cases, and the reasoning in the Section 2254 cases mirrors that in the 2255 cases.

Only three comments were received. Two addressed issues that had been considered before publication: whether there was any need for an amendment, and whether to replace “may” with a phrase such as “has a right to” or “is entitled to.” These issues had been debated at length before publication, and the Committee decided there was insufficient reason to revisit them.

The third comment, from NACDL, expressed support for the proposed amendments to Rule 5 of both the 2254 and 2255 Rules, but suggested a related change. NACDL argued that inmates should be told about the reply and when it should be filed at the time the court orders the respondent to file a response; it proposed an additional amendment to Rule 4 of the Section 2254 and 2255 Rules. Although the Committee was not persuaded that an amendment to the Rules was warranted, it did approve the addition of the following sentence to the Committee Notes accompanying the Rule 5 amendments dealing with notice to prisoners of the time to reply:

Adding a reference to the time for the filing of any reply to the order requiring the government to file an answer or other pleading provides notice of that deadline to both parties.

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In the Committee's view, this addition would serve as a helpful reinforcement of best practices, and it would not require republication.

With this change to the Committee Notes for both Rules 5, the Committee voted unanimously to approve the Rule 5 amendments for transmittal to the Standing Committee.

The Committee unanimously recommends that the Standing Committee approve the amendment to Rule 5 of the Rules Governing Section 2254 Cases and Rule 5 of the Rules Governing Section 2255 Proceedings, and the accompanying Committee Notes as amended after publication, for transmittal to the Judicial Conference.

* * * * *



JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

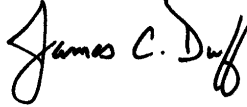
THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

JAMES C. DUFF
Secretary

October 24, 2018

MEMORANDUM

To: Chief Justice of the United States
Associate Justices of the Supreme Court

From: James C. Duff 

RE: TRANSMITTAL OF PROPOSED AMENDMENTS TO THE FEDERAL RULES OF
CRIMINAL PROCEDURE, THE RULES GOVERNING SECTION 2254 CASES IN
THE UNITED STATES DISTRICT COURTS, AND THE RULES GOVERNING
SECTION 2255 PROCEEDINGS FOR THE UNITED STATES DISTRICT COURTS

By direction of the Judicial Conference of the United States, pursuant to the authority conferred by 28 U.S.C. § 331, I transmit herewith for consideration of the Court new Rule 16.1 of the Federal Rules of Criminal Procedure, and amendments to Rule 5 of the Rules Governing Section 2254 Cases in the United States District Courts, and Rule 5 of the Rules Governing Section 2255 Proceedings for the United States District Courts, which were approved by the Judicial Conference at its September 2018 session. The Judicial Conference recommends that the amendments be adopted by the Court and transmitted to the Congress pursuant to law.

For your assistance in considering the proposed amendments, I am transmitting: (i) a copy of the new and amended rules, and accompanying Committee Notes; (ii) a redline version of the same; (iii) an excerpt from the September 2018 Report of the Committee on Rules of Practice and Procedure to the Judicial Conference; and (iv) an excerpt from the May 2018 Report of the Advisory Committee on Criminal Rules.

Attachments

**PROPOSED AMENDMENTS TO THE
FEDERAL RULES OF CRIMINAL PROCEDURE¹**

1 **Rule 16.1. Pretrial Discovery Conference; Request for**
2 **Court Action**

3 **(a) Discovery Conference.** No later than 14 days after the
4 arraignment, the attorney for the government and the
5 defendant's attorney must confer and try to agree on a
6 timetable and procedures for pretrial disclosure under
7 Rule 16.

8 **(b) Request for Court Action.** After the discovery
9 conference, one or both parties may ask the court to
10 determine or modify the time, place, manner, or other
11 aspects of disclosure to facilitate preparation for trial.

Committee Note

This new rule requires the attorney for the government and counsel for the defendant to confer early in the process, no later than 14 days after arraignment, about the timetable and procedures for pretrial disclosure. The new requirement is particularly important in cases involving electronically

¹ New material is underlined.

2 FEDERAL RULES OF CRIMINAL PROCEDURE

stored information (ESI) or other voluminous or complex discovery.

For practical reasons, the rule does not require attorneys for the government to confer with defendants who are not represented by counsel. However, neither does the rule limit existing judicial discretion to manage discovery in cases involving pro se defendants, and courts must ensure such defendants have full access to discovery.

The rule states a general procedure that the parties can adapt to the circumstances. Simple cases may require only a brief informal conversation to settle the timing and procedures for discovery. Agreement may take more effort as case complexity and technological challenges increase.

Moreover, the rule does not (1) modify statutory safeguards provided in security and privacy laws such as the Jencks Act or the Classified Information Procedures Act, (2) displace local rules or standing orders that supplement and are consistent with its requirements, or (3) limit the authority of the district court to determine the timetable and procedures for disclosure.

Because technology changes rapidly, the rule does not attempt to state specific requirements for the manner or timing of disclosure in cases involving ESI. However, counsel should be familiar with best practices. For example, the Department of Justice, the Administrative Office of the U.S. Courts, and the Joint Working Group on Electronic Technology in the Criminal Justice System (JETWG) have published “Recommendations for Electronically Stored Information (ESI) Discovery Production in Federal Criminal Cases” (2012).

Subsection (b) allows one or more parties to request that the court determine or modify the timing, manner, or other aspects of the disclosure to facilitate trial preparation.

This rule focuses exclusively on the process, manner and timing of pretrial disclosures, and does not address modification of the trial date. The Speedy Trial Act, 18 U.S.C. §§ 3161-3174, governs whether extended time for discovery may be excluded from the time within which trial must commence.

ANNOUNCEMENT

SEAN BRODERICK, NATIONAL LITIGATION SUPPORT ADMINISTRATOR
DEFENDER SERVICES OFFICE TRAINING DIVISION
FEDERAL PUBLIC DEFENDER
1300 CLAY STREET, SUITE 315
OAKLAND, CA 94612

March 19, 2021

From: Sean Broderick
To: CJA Panel Attorney Representatives
CC: Federal Public and Community Defenders (FDOs), Case Budgeting Attorneys, CJA Panel Administrators, Defender Automated Working Group (DAWG), , Frank Draper, Cait Clarke
Re: *Discounted CJA Panel Rate for TrialDirector 360 Licenses for CJA Panel Attorneys*

The National Litigation Support Team (NLST) is pleased to announce that Ipro has agreed to provide a discounted rate for CJA panel attorneys to purchase a subscription license of Ipro TrialDirector 360.

TrialDirector 360 is a courtroom presentation tool that allows users the ability to present documents, pictures and videos in hearings and trials. Users can prepare exhibits in advance, or instantly display exhibits to jurors and judges. Additionally, attorneys can direct jurors' attention to the most important parts of exhibits by doing call-outs, zoom-ins, mark-ups, highlights, and side-by-side comparisons of documents. During the examination of a witness, it is easy to do a screen capture of information that has been displayed to the jury for later use in the trial, and the software works well when used along with PowerPoint. TrialDirector has been successfully used for many years by FDOs and CJA panel attorneys representing clients and has been a staple of the Law and Technology workshop training series for close to 20 years.

CJA panel attorneys can purchase TrialDirector 360 at a discounted price of \$556.50 per year (approximately 40% off the retail price). This price is for a subscription, so you must pay this amount each year to continue using the software.

If CJA panel attorneys are interested in purchasing TrialDirector 360 contact Kelly Scribner at kelly_scribner@fd.org. If you have any questions regarding the utilization of TrialDirector 360 for your office, please contact the National Litigation Support Team (NLST): Kelly Scribner, Alex Roberts or Kalei Achiu at kelly_scribner@fd.org, alex_roberts@fd.org or kalei_achiu@fd.org.

The NLST will be providing remote one-on-one training on how to use TrialDirector 360 for any user interested. Please have the user contact Kelly Scribner at kelly_scribner@fd.org to schedule training. We will be working towards preparing a list of training resources relevant for TrialDirector360 for FDOs and CJA panel attorneys in the coming weeks.

ANNOUNCEMENT

SEAN BRODERICK, NATIONAL LITIGATION SUPPORT ADMINISTRATOR
DEFENDER SERVICES OFFICE TRAINING DIVISION
FEDERAL PUBLIC DEFENDER
1300 CLAY STREET, SUITE 315
OAKLAND, CA 94612

January 22, 2024

From: Sean Broderick
To: Federal Public/Community Defenders and CJA Panel Representatives
CC: Administrative Officers, Computer Systems Administrators, DAWG members,
Frank Draper, Elizabeth Luck, Brian Wiggins
Re: *National Contract with Slate Technology for the organization of wiretap interceptions,
jail calls, and social media productions (FDOs and CJA Panel Attorneys)*

The National Litigation Support Team (NLST) is pleased to announce that it has obtained a litigation support services contract with Slate Technology. For more than a decade, this company has provided services in numerous multidefendant cases nationally, supporting CJA panel attorneys and Federal Defender Offices by providing basic organization and conversion of multimedia files provided in discovery. If you have a multidefendant case with a significant volume of wiretap interceptions, jail calls, or social media productions, Slate Technology's services may assist you in making the discovery easier for you to review.

Eligibility

Slate Technology is available to help on multidefendant cases that have large volumes of discovery. To ensure Slate Technology can provide the services you need within the timeframe you need it, those seeking help must submit a short statement about why the service is being sought and the date the work must be completed. Other eligibility factors differ depending on the discovery type. For wiretaps, factors considered are the number of interceptions, the number of target telephones, and whether linesheets or equivalent data were produced. For jail calls, required information for consideration is the number of inmates under surveillance, the number of recorded calls, and whether data about the calls was produced that identifies the caller by name or PIN, date, time, and the number dialed. The extent to which Slate Technology can assist social media materials will depend on the number of accounts, the form of production (PDF or Archive Data File/HTML), and whether related audio and video files were provided.

Services Slate Technology Provides

If your case is accepted, Slate Technology will convert proprietary and non-standard format files they can access to an industry standard format that then can be played on any computer used by members of the legal team. In addition, key metadata will be extracted from the files, and the metadata then can be used by defense team members in a review database or spreadsheet to

search, review, and filter otherwise unsearchable discovery. In certain instances, exact duplicates of multimedia files can be identified and then eliminated or hidden from the review workflow. Slate Technology's services will do the following for wiretap, jail calls, and social media:

Wiretap Interceptions

- Identify both common and uncommon formats of wiretap linesheets.
- Combine various formats of linesheets into a single, usable format.
- Split consolidated sessions into single sessions for easier filtering and review.
- Convert audio files into an industry standard format to play on any computer.
- Produce hyperlinked, sortable spreadsheets with the extracted metadata from linesheets, the associated audio files and GPS coordinates.

Jail Calls

- Identify and extract metadata from jail calls captured in various formats from federal, state, and city detention facilities and pair them with their associated audio recording.
- Convert audio files into an industry standard format to play on any computer.
- Produce hyperlinked, sortable spreadsheets with the extracted metadata from the recorded calls with the associated audio files that can be filtered by date, time, and phone number among other key objective information.

Social Media

- Identify and extract private messages from social media productions provided by the social media providers to law enforcement.
- Convert the private messages to a "chat" format while maintaining account holder names, dates, photos, audio, video, and emojis.
- Convert audio and video files to an industry standard format to allow the files posted on social media sites to be played on any computer.

In addition, Slate Technology will be able to provide a total hour and minute count for all the multimedia files they are provided. This provides defense teams statistical information which they can use to describe in objective, quantifiable terms the voluminous information they have to potentially review for a case.

If your case is a multidefendant case, has voluminous wiretaps or jail calls (e.g., over a thousand records), or voluminous social media files and you think you need assistance, write to Kelly Scribner at kelly_scribner@fd.org with the information described and requested under the "Eligibility" paragraph of this announcement.

If you have further questions, please contact Kelly Scribner at 510-435-9979 or kelly_scribner@fd.org.