Digital Forensics and eDiscovery: A Collaborative Approach to Modern Investigations

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Investigators must now address complex data sources, large data volumes, and tight deadlines.

As private investigators, we may be retained by a party involved in a due diligence investigation, a spouse involved in a matrimonial dispute, a vehicle accident, human resources department responding to an employee claim, or a legal department conducting an internal investigation. Engaging a digital forensic practitioner is critical; they have access to specialized hardware and software that allows for the integrity of source data, including metadata, to be preserved throughout the process. Beyond the technical aspects of the process, including log files being generated, and digital fingerprints being calculated for the collected data, the digital forensic practitioners maintain thorough chain of custody documentation.

Once the data is collected, one of three things typically occurs when it arrives at a digital forensics laboratory:

- The physical media, containing the data, is securely stored until further notice;
- The data is loaded and culled, based on specific criteria;
- A forensic examination is performed;

STRATEGIC COLLABORATION

What happens beyond the culling or forensic examination? That depends on the requirements of the client, data custodian, and the strategic guidance from the client and an eDiscovery consultant. Many digital forensic firms do not offer eDiscovery services; if they do, digital forensic practitioners must collaborate with their eDiscovery consultant peers. It is important to engage early, as the best outcomes will happen when the eDiscovery consultant is involved during the initial scoping, prior to when the data collection or examinations are completed. An eDiscovery consultant is focused on the production of data, specifically the delivery format, as many matters are guided by strict protocols by the courts and government agencies. For example, an electronically stored information (ESI) protocol may specify that documents need to be produced in native format with all associated metadata fields.

During the collaborative process, it is important to be transparent and get an understanding of the client's end goal. It is during this time that the tools to be utilized and the approach to be taken must be discussed. An investigation may not always entirely rely on digital forensic tools.



Other technology may need to be leveraged. For example, due to large data volumes, it may be necessary to perform the following types of analysis in a document review platform, including:

- Email, text/chat threading to group multiple messages;
- Reviewing and tagging (bookmarking) email messages, along with associated attachments;
- De-duplication of data based on specific fields or content;
- Optical Character Recognition (OCR) to make non-text-based files searchable;
- Artificial Intelligence (AI) to identify patterns in data (even multimedia), issues from documents, or key documents - faster than using OCR or keyword searching;

PUTTING DATA INTO ACTION

The gap between investigations and eDiscovery is real. This statement is especially true when it comes to video evidence. Just think about an unlawful surveillance case that includes hours of recordings from various cameras, stored on physical devices, and cloud storage services. Where do you begin? Data preservation and collection. What is your goal? To identify the victim in the recordings during specific periods.

Although this seems simplistic, it is extremely complex. As a first step, videos and images on the devices need to be identified and exported; dates and times need to be used to further cull for relevance. Forensic tools are well suited for these processes. However, if the data needs to be reviewed by multiple parties, for specific content, objects, or patterns, an eDiscovery document review platform would be ideal. For example, if there is a need to identify when an object or person is captured in a frame, traditionally this would be a manual process, perhaps taking weeks. Leveraging a document review solution, especially with built-in AI capabilities, would allow the parties to reduce the timeframe down to hours or days.

KNOWING WHEN TO PIVOT

Today's investigations are complex. They require not only an understanding of how to preserve and collect information, but how to analyze it in the most defensible and efficient manner. Nothing is cookie-cutter, and innovative solutions are available to assist with making the data more user friendly, and reviewable. A digital forensic practitioner in collaboration with an eDiscovery consultant, ensures that information obtained from data can be actionable and impactful in hopes of a successful investigative outcome. **PI**



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