

Early Data Assessment

Making Molehills out of Mountains

Munger, Tolles & Olson LLP



What Mountains?

- It is estimated that there were over 762 e-mail users in 2008 and over 64 billion e-mails sent per day.
- A single hard drive may store the equivalent of 40 million pages.
- The storage capacity of a hard drive in a modern computer can exceed over 300 GB.
- What Does This Mean In Terms of Discovery As You Know It?
 - 1 megabyte = a short novel
 - 1 gigabyte = a pickup truck filled with books
 - 1 terabyte = 50k trees converted into paper



Which Molehills?

- Even if technically relevant, only a very small portion of documents evaluated or exchanged tend to be actually *important* to litigation
- And even fewer will be used at trial
- A multi-terabyte case *can* actually really be a “small box case”
- Ahhhhh.....but which boxes???

What Is Early Data Assessment?

- Process of analyzing and evaluating Electronically Stored Information that has been collected (or is to be collected) for litigation
- Different from document review
- Not just using technology
- Related (but different) from “Early Case Assessment” because focus is on the data involved



Why Do Early Data Assessment?

- Risk assessment
- Identify value of case
- Identify key facts, persons, dates, issues
- Develop defensible search methodology
- Negotiate strategy
- Focus scope of discovery
- Help get to the important stuff first
- Reduce volume and reduce cost – i.e.
Make Molehills from Mountains



How Do I Get There?

- People
- Process/Workflow
- Technology

Got Clear and Shared Goals?



Client



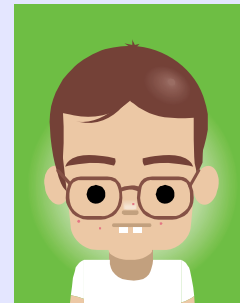
Partner



Associate



Paralegal

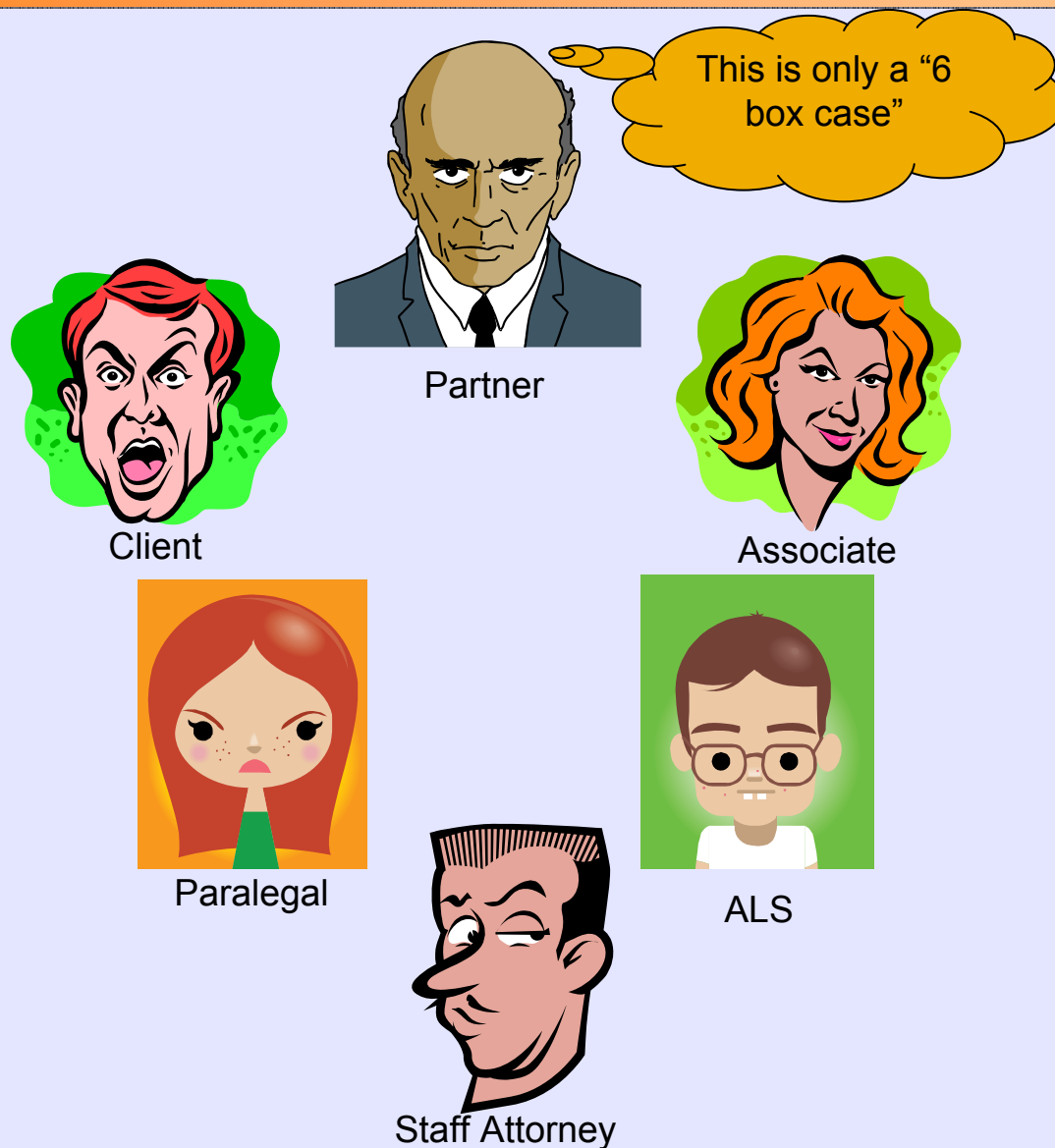


ALS

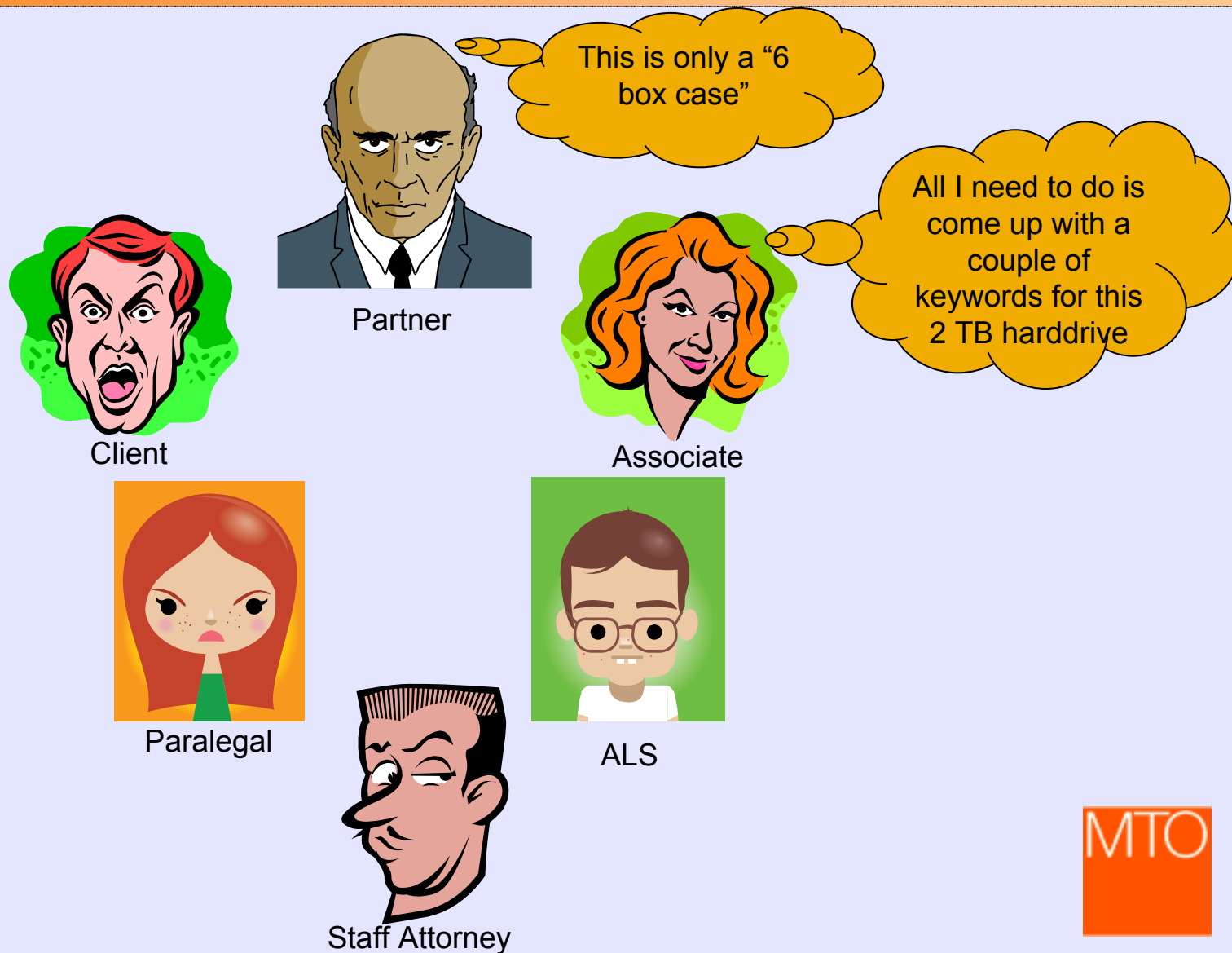


Staff Attorney

Got Clear and Shared Goals?



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This is only a "6 box case"

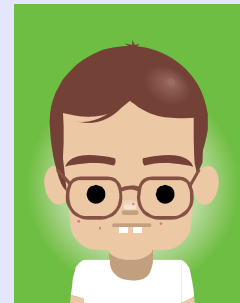


Associate

All I need to do is come up with a couple of keywords for this 2 TB harddrive



Paralegal



ALS

So that gets us down to only 50 GB. Where should we load the 2.5 million pages?



Staff Attorney



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To get this done in a week, we're gonna need some more reviewers



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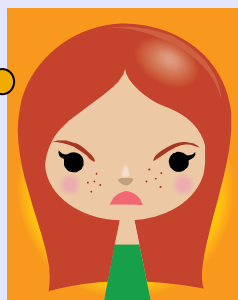
Client

Depo kits and trial binders? Time to fire up the Xerox machines and assemble the clerks!

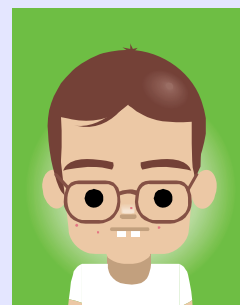


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Got Clear and Shared Goals?

The bill is how much?!? The case is only worth half that!



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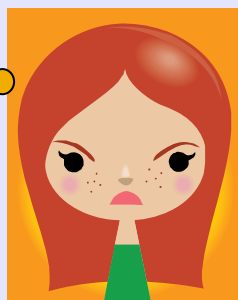
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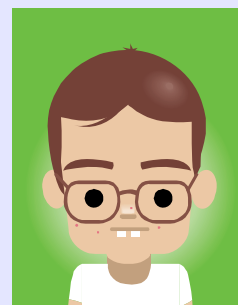
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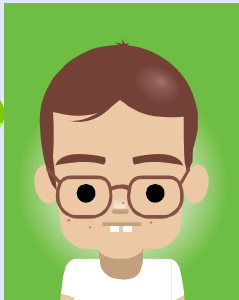
Staff Attorney



A Better Way

I have spoken with my team and, before we start down the road of an expensive document review, we have developed a plan to assess the data in this case so that we may better evaluate the cost to proceed and the likelihood of success at trial.

Sounds great, thanks!



Developing a Process

- Effective
- Iterative
- Flexible
- Defensible and Documented

What is a Defensible Process?

- Explainable
- Accurate and effective
- Repeatable
- Measurable and validated
- Appropriate to context
- Reflects fairness and good faith
- Cost appropriate

Non-Tech Tools

- What are some non-tech approaches that can help with early data assessment?
 - Custodian interviews
 - Org chart analysis
 - Data map analysis
 - Time line analysis

Practical Tips

- Scope your end goals
- Review key docs such as pleadings
- Understand technology limitations
- Develop preliminary search strategy
- Test your search results
- Document, document, document
- Revise as necessary
- Sampling what the searches are returning and not returning
- Don't forget about the non-tech tools



Questions?

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