

## **National Litigation Support Team Direct Assistance for CJA Panel**

### **Introduction**

The National Litigation Support Team (NLST) provides national policy work on electronic discovery and litigation support, advises the judiciary, defenders and CJA panel on the same, assists with management of three Coordinating Discovery Attorneys (CDAs), national litigation support and digital forensic software contracts for the defender system, and trains court-appointed counsel and defender personnel on the use of technology in litigation. The NLST also provides direct assistance to CJA panel counsel with the management of large volumes of e-discovery in select CJA cases, based on the following criteria:

1. The CJA panel attorneys have limited resources and experience with e-discovery;
2. The case does not fit the criteria to appoint a CDA;
3. The NLST has determined that the litigation support tools it has available can facilitate quality and cost-effective management of manage the e-discovery in the case;
4. The attorneys have asked for assistance; and
5. The NLST have the time and resources to do the work.

### **Description of Potential Work**

When performing this work on behalf of the CJA panel attorney, the NLST is working under the direction of the attorney. In this capacity, the NLST staff are serving as agents of the attorney, and are not making legal decisions or providing subjective legal analysis. The NLST's focus is on discovery management but not discovery analysis. By focusing on discovery management, the NLST avoids potential conflict of interests if there are multiple defendants.

The following is what the NLST agrees to do (based on the circumstances of the case):

1. Provide an initial and general discovery assessment by volume and file types.
2. Recommend and/or implement discovery management tools for efficient review of discovery and avoid duplicative effort and costs.
3. Train counsel on technology support tools.

## **Summary of Possible Work Flow**

### **I. Initial Review of Data**

- A. Upon receipt, the discovery is reviewed to identify the composition of the data, including the volume and format of documents, audio and video files, wiretap data, and emails. The NLST will assess services required for the initial review (e.g. ability to view forensic images of hard drives).
- B. The discovery is reviewed to determine if documents have been provided in a searchable format or if they will need to be made searchable prior to distribution and/or loading into a discovery management tool. PDFs in the production will be reviewed to determine if they comprise many documents combined into one PDF and, if so, the best way to create document breaks for review.
- C. The types of documents in the production must also be determined to identify the best method for organizing the data. For example, multi-defendant drug cases have a high volume of DEA-6s and linesheets while fraud cases will likely have more business records and emails.

### **II. Initial Distribution of Discovery to Defense Counsel**

- A. If documents are produced in a manner not easily searchable, the NLST will provide the defense counsel with a searchable version of the discovery. This may involve converting TIFF images to PDFs, OCRing PDFs to make them searchable, and creating a PDF index to search across all the PDFs in the production.

### **III. Selection of Vendor**

- A. If third-party services are needed, the NLST are available to interview and assist with the solicitation of proposals from multiple technology vendors to ensure defense counsel and the courts are receiving the most useful and cost effective tool for each case. The ultimate decision to use third-party services (and if additional funding is needed, request funds for them), are the responsibility of defense counsel.

## Sample Workflow by Case Types

### IV. Drug Cases

- A. In drug cases, there are fewer documents (other than linesheets) and a large amount of mixed media discovery including surveillance photos and video. Forensic images of hard drives and email collections are typically not part of the discovery.
1. Audio and video discovery are provided in a myriad of different formats which may be incompatible with certain operating systems. The NLST may review the format of the discovery and make helpful format conversions.
  2. There may be large volumes of pole camera video. For multiple defendant cases, the cost of providing drives of all the pole camera video to each defense counsel can be prohibitive. The NLST may contact the Federal Defender for the particular district to see if their office is willing and able to keep a copy of the pole camera video drive(s) and allow defense counsel to view it at the Federal Defender office. The NLST can also make a copy for individual defense counsel if requested to do so and if the defense counsel provides a drive on which to copy it. Finally, if defense counsel can identify a particular location or time period within a video or videos that he or she wishes to review, the NLST can copy this smaller section to a drive or disc.
  3. The NLST may convert proprietary audio files into industry standard file formats and link them to a sortable Excel spreadsheet or a CaseMap database with other related files. These types of tools could include hyperlinks to the audio files and corresponding linesheets of wiretaps so counsel can search for pertinent calls by objective information provided by the government such as the target telephone number, the session number, date, start time, duration, whether the call was classified as pertinent or non-pertinent, and whether the call was completed. This assistance allows CJA panel attorneys to more quickly and easily review the audio files and related digital discovery, better analyze the discovery, and track their notes regarding it. If the NLST is unavailable to do this work, they may assist defense counsel in contracting with vendors to create the sortable spreadsheets.

4. The documents (other than linesheets), photos, video and any non-wiretap audio can be organized in four ways: sortable spreadsheets; a CaseMap database; web-based databases; or a hybrid approach. For discovery without searchable text such as photos and other surveillance discovery items, the NLST may recommend having reviewers code each item into sortable spreadsheets. The NLST can assist counsel to determine whether funds will be needed to hire contractor reviewers to code and if so, will assist defense attorneys in petitioning the court. If counsel wish to proceed with creating sortable spreadsheets, reviewers may code objective data such as dates, author, exhibit numbers, and a general description of the item so defense counsel can sort the data by any of these categories and filter down to the most important documents. Coding documents can be beneficial, but there is a cost for each field coded so counsel will need to do a cost-benefit analysis for the work to be done.

## **V. Fraud Cases**

- A. To allow defense teams to prepare their initial case strategy immediately, the NLST may recommend creating a sortable spreadsheet of the FBI-302s, Search Warrant Affidavits and the Indictment. This spreadsheet could contain links to the files, a column referencing names and entities mentioned, pertinent dates and the subject (e.g. interviewee, search warrant location, etc.). Users can filter down to smaller collections using any of the coded categories.
- B. For cases where the NLST has determined that the discovery can be reviewed most efficiently using a database, the NLST will determine whether the data can be hosted on Casepoint's online document review platform or whether a third-party database company must be engaged. Factors for determining the appropriate vendor will depend upon costs, data size, and file types.
- C. Most government productions for fraud prosecutions include forensic images of computers, servers, or drives - essentially a copy of everything residing on the original device. There is unnecessary data included, such as program files like Microsoft Office, downloaded music and videos, and other similarly unnecessary items. The NLST will assist in locating and identifying potential file types to exclude.
- D. The NLST will look for ways to create folders and/or tags. Creating folders or tagging documents in a database can be an effective and efficient way to organize large volumes of discovery. These methods of organization could be by defendant names, other names mentioned within the discovery, places, or business entities.

## **Conclusion**

The NLST will create discovery management tools to assist counsel. The NLST is available to provide continuous training throughout the case. However, the ultimate review and analysis of the case materials are the sole responsibility of defense counsel.

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