



# YOUR MANUAL LEGAL HOLDS COST TOO MUCH

An analysis of the true cost of manual legal holds  
and why an automated process makes sense

Legal Hold **Pro**<sup>TM</sup>  
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A vast majority of organizations use a manual legal hold process to implement holds. Because the costs are largely hidden in salaries and the risk is tough to quantify, the real costs have been hard to measure.

Until recently, the only other option for automating the legal hold process was enterprise software packages with six- and seven-figure price tags – not a viable alternative for most. Legal Hold Pro introduces an innovative web-based approach that lowers risk **and** costs by streamlining redundant tasks and significantly reducing the overall burden on an organization. This analysis examines in detail the benefits of upgrading your preservation workflow with Legal Hold Pro.

## The Hidden Costs of a Manual Legal Hold Process

If you've been paying attention to the case law at the Federal court level in 2010, you will undoubtedly have seen case after case critical of legal hold and preservation practices. *Pension Committee. Rimkus. Victor Stanley II. Orbit One.*<sup>†</sup> All have reaffirmed that failing to demonstrate "reasonable and good faith" efforts when responding to a duty to preserve will be met with harsh criticism by the courts, and potentially costly motions and sanctions when challenged by opposing counsel. In fact, a recent study by King & Spalding found that "sanction motions and sanction awards for e-discovery violations have been trending ever-upward for the last 10 years and have now reached historic highs."

Yet many organizations continue to rely on ad hoc and inconsistent approaches to managing the legal hold process. Existing legal hold notification practices – if they are in place at all – are simply too time consuming and error-prone. Attempts to "collect-to-preserve" (a traditional approach to preservation) quickly become overwhelming as the volume of potentially-relevant electronically stored information (ESI) continues to grow. Efforts to mitigate risk by moving all data into "smart repositories" such as email archives

and content management systems leads to over-preservation and is very expensive.

Given the heightened awareness of both the courts and opposing counsel, it is time to re-think traditional approaches to managing the preservation process.

### THE COST OF INEFFICIENCY

Manual processes are expensive because it consumes far more organizational time than most realize. If you are utilizing a manual process today, you're likely either skipping critical steps (like sending periodic updates or reminders on a regular basis) or spending an inordinate amount of time tracking down custodian acknowledgements, updating spreadsheets, and generating reports.

Take a closer look at your process: you send a hold, keep track of responses, and send follow-up requests to those who haven't responded. Occasional revisions to the hold need to be sent when the scope changes. Routine reminders need to be sent to all active custodians several times a year. Finally, you need to keep track of everything you send, and what responses you receive.

Now estimate how much time those actions take for a typical hold of say fifteen custodians? An hour a week? That's over 50 hours a year, for just one hold (at \$90K burdened salary, nearly \$2,500 per year in labor cost). Let alone the incremental cost on the organization of custodians responding using manual methods.

Manual tracking is also a tedious process that routinely opens the door to costly errors and omissions. The magnitude of the task can also lead to poor decisions about re-issuing holds and sending timely reminders, both of which are included in The Sedona Conference's best practice guidelines. Such inefficiency extends not only to those responsible for managing the hold notification process, but to those responding to the hold notice as custodians or data stewards.

### THE COST OF HUMAN ERROR

Legal hold actions are complex operations built on simple tasks. Unfortunately, as stress increases so does the risk of human error and resulting spoliation. As custodian populations increase – often the case in high-stakes litigation – such errors accumulate at an even higher rate.

A well-articulated process which is consistently applied is much easier to

<sup>†</sup>*The Pension Committee of the Univ. of Montreal Pension Plan, et al. v. Banc of America Securities LLC, et al.* Amended Order, Case No. 05-cv-9016 (SDNY Jan. 15, 2010); *Rimkus Consulting Group Inc., v. Nickie G. Cammarata, et al.*, 07-cv-00405 (SDTX Feb. 19, 2010); *Victor Stanley, Inc. v. Creative Pipe, Inc., et al.* (D.MD, Sept. 9, 2010); and *Orbit One Communications, Inc. v. Numerex Corp.*, 2010 WL 4615547 (SDNY Oct. 26, 2010)

defend, both in court (e.g., quickly dispensing a claim of spoliation or bad faith) and in discussions with opposing counsel (e.g., when negotiating a fair and reasonable scope of discovery or settlement offer).

Examine your own legal hold processes and critically assess your confidence if you had to defend them in court. In the event of spoliation, whether inadvertent or the actions of a bad actor, having a sound legal hold process lessens the risk of catastrophic sanctions or the imposition of additional discovery burden and remediation costs.

### THE COST OF 'OVER-PRESERVATION' AND 'OVER-COLLECTING'

A key aim of a legal hold notification is to suspend routine destruction of relevant information. Rather than rely on costly and overly-broad "collect-to-preserve" or "search-and-hold" strategies, a process-centric legal hold notification strategy offers a reasonable and proportional response to most preservation obligations. The courts have affirmed that a written legal hold process, when done correctly, represents a reasonable and good-faith response. In addition, the risk of

inadvertent spoliation by those who have custody, ownership or control of relevant information is also dramatically reduced.

In a recent study done by IDC, the average amount of data being collected for a typical case in the US has risen to more than 2.5 terabytes, more than double the year previously. Such exponential growth is only

expected to continue if traditional approaches to discovery are relied upon. This replicated data must then be retained in an accessible and secure format (incurring incremental storage and disaster recovery costs), and later culled using expensive data processing or human resources to determine relevance for discovery. Such replicated data can also become subject to future, unrelated preservation obligations, further escalating the risk and burden of overly broad collect-to-preserve strategies.

To the extent that potentially responsive information can be retained in the manner consistent

with "in its normal course of business," such burdens are significantly lessened. Data is not replicated unnecessarily. Collection and processing costs are not incurred until required for early case analysis or production, and discovery is more likely to be based on a tiered or sampling basis.

When a retain-in-place strategy can be enabled with technology, such as with archiving or content management repositories, the risk can be further reduced. However, such technologies are expensive, time-intensive and disruptive for an organization to implement.

Further, relying on data stored only in smart repositories is rarely all-encompassing to a preservation obligation.

Thus, a sound and effective "process-centric" approach to preserving data in place represents an affordable and necessary alternative.

**"The costs associated with defending against spoliation accusations can eclipse any actual sanctions. Spending a little time, effort and money early should take this argument away from your opponents."**

*– John Jablonski*

## Modernizing Your Preservation Processes Reduces Costs, Time and Risk

In these times when budgets are tight and the risks are growing, it is time to invest in a new approach. Legal Hold Pro is a new breed of technology for automating the legal hold management process, taking far less time and doing a much better job of informing and reminding custodians of their preservation duties. Legal Hold Pro is changing the face of legal preservation.

### THE VALUE OF AUTOMATION

By automating the process with Legal Hold Pro, you can gain labor efficiencies, significantly increase the accuracy and completeness of audit trails, and achieve better utilization of your legal staff's time. You also save time generating new hold notices through re-use (using prior holds or stored templates), while improving

consistency across the organization. Such consistency fosters greater understanding and efficient follow-through by hold recipients.

### INFORMATION IN ONE PLACE

Information management is critical in today's fast-paced work environment. Having current information at the ready for you or

others can make a critical difference, including the ability to mine data and create statistics for continuous improvement.

Using Legal Hold Pro to automate the process puts all of the information in one place and makes it accessible to those that need it. Who do we typically send a hold to when this type of matter arises? What parts of the organization are subject to holds most frequently? Is an employee who is about to leave the company subject to any active holds? The value of capturing such institutional knowledge can be huge.

### THE CONFIDENCE OF DEFENSIBILITY

Defensibility is key to staying out of trouble and winning cases. Having a well-executed process promotes understanding, transparency and consistency, which in turn yields predictable results and builds trust. Organizations that have a reliable legal hold process can confidently institute a “preserve-in-place” strategy for preservation, rather than going through the expensive collection process for each and every matter. It creates an environment where a legal team can utilize targeted, just-in-time collections (i.e., preserve broadly; collect narrowly and when needed). Such an approach is a huge cost- and time-saver.

### PROPORTIONALITY AND THE PROCESS-DRIVEN APPROACH

A sound legal hold process is a foundation for a strong document retention policy and lowers overall e-discovery costs. Rather than jumping into the “deep end” of expensive collection or storage management tools, a process-centric approach to preservation provides a reasonable and proportional alternative.

Automating the process with Legal Hold Pro, because it is easy to deploy, imposes minimal disruption to your business operations. When done right, it enables a defensible and good-faith response to a discovery obligation.

# One-Year ROI for Legal Hold Pro Tops 260%

We have conducted a **detailed analysis of the economic impact of Legal Hold Pro** in an organization. This estimate takes into account labor cost reductions when comparing with a manual process versus a Legal Hold Pro implementation. What this analysis does not contemplate are the reduced risks and lower costs for data management, factors which further increase the value of deploying the system for managing the legal hold notification process.

Legal Hold Pro is an on-demand service that has **no start-up costs**. Unlike enterprise software, it can be used immediately and without investing in hardware and IT resources to get up and running. Also, Legal Hold Pro does not require training and support, since users usually take less than an hour to get started.

In analyzing the typical legal hold workflow for a **mid-size corporate legal department with 5-6 legal holds per month** and an average of 15 custodians per hold, the impact is huge. The analysis is modeled to meet the contemporary standard for legal hold preservation which includes drafting a hold notice, sending it via email, tracking custodian responses and sending quarterly reminders. When totaled, the **manual hold notification process exceeded \$87,000 in labor costs alone**— or the equivalent of one full-time person.

By implementing Legal Hold Pro to automate routine processes, an organization can **reduce the time associated with issuing and tracking hold notifications by an estimated 76 percent**. At the anticipated volume of holds, the organization utilizes an annual subscription plan of \$18,000 annually for Legal Hold Pro. Adding labor costs associated when using Legal Hold Pro, the total cost is approximately \$22,181.

Based on workflow estimates from information provided by users, an \$18,000 investment in Legal Hold Pro yielded a total economic benefit of approximately \$47,000 – a **calculated ROI of 260.2 percent**. The economic impact will further increase over time as the number of legal holds accumulates year over year. In addition, the economic model excludes the added value of reduced risk of sanctions and lower downstream e-discovery costs.

	Total Hours/Yr.	Total Labor (at \$60K/yr <sup>*</sup> )	Additional Expenses	Total Cost
Manual Hold Tracking	1,912.0	\$87,019		\$87,019
Legal Hold Pro	487.5	\$22,181	+\$18,000	\$40,181
Economic Benefits	Labor Costs Reduced: 76%		Savings: \$46,838	
*\$90K fully burdened			<b>ROI =</b>	<b>260.2%</b>

To learn more about Legal Hold Pro, visit [legalholdpro.com](http://legalholdpro.com) or call 888.376.0666

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