

New Developments in Electronic Discovery

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Electronic Discovery

Three Topics for Today

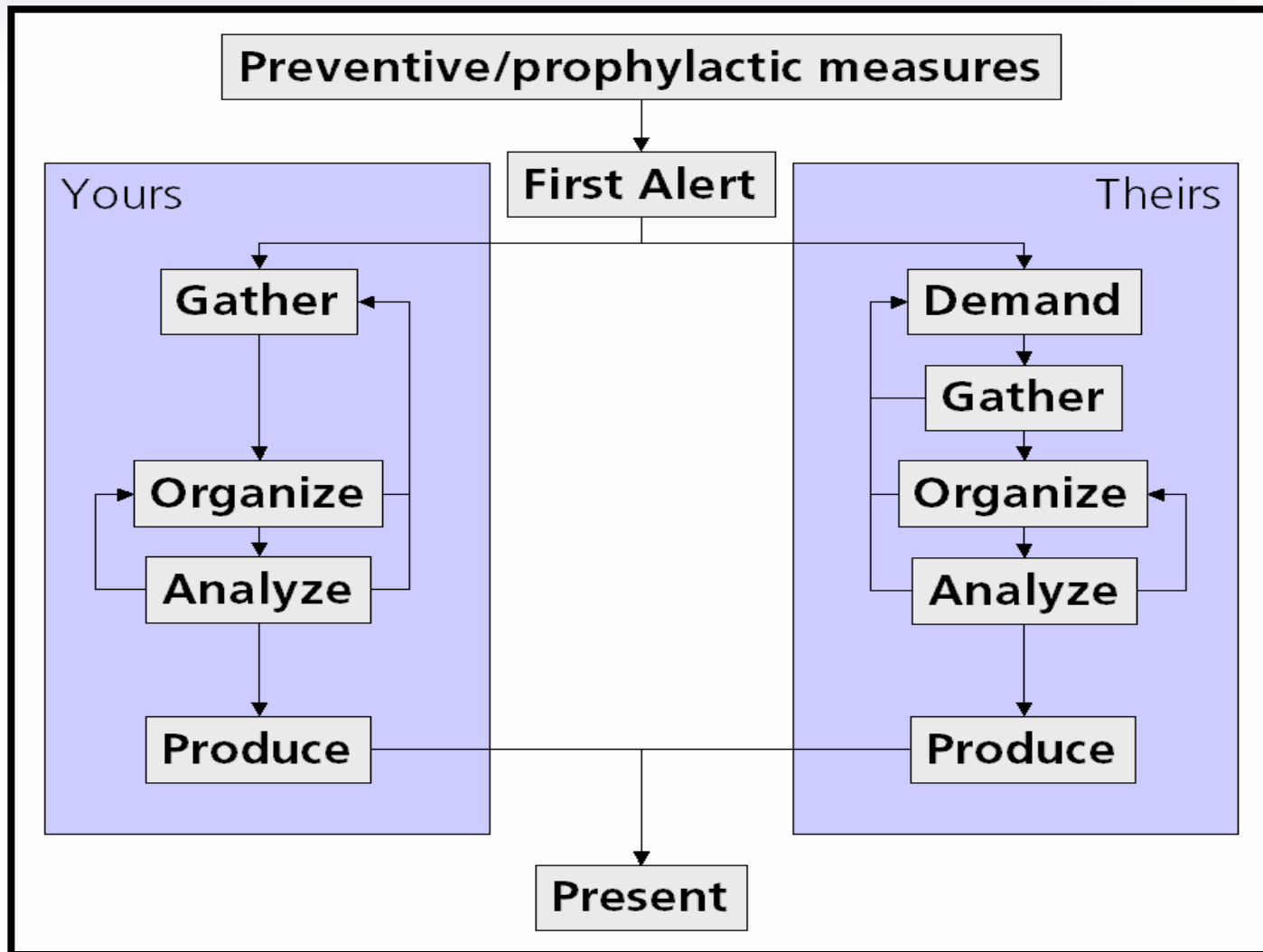
- ✓ How These Issues Arise in Every Type of Case
- ✓ Getting Your Opponent's Data
- ✓ Cost as a Factor Affecting This Discovery

How These Issues Arise in Every Case

Why Should That Be?

- ✓ Electronic Discovery = Discovery
- ✓ The 93% Solution
- ✓ Think of Where We Keep Information Today

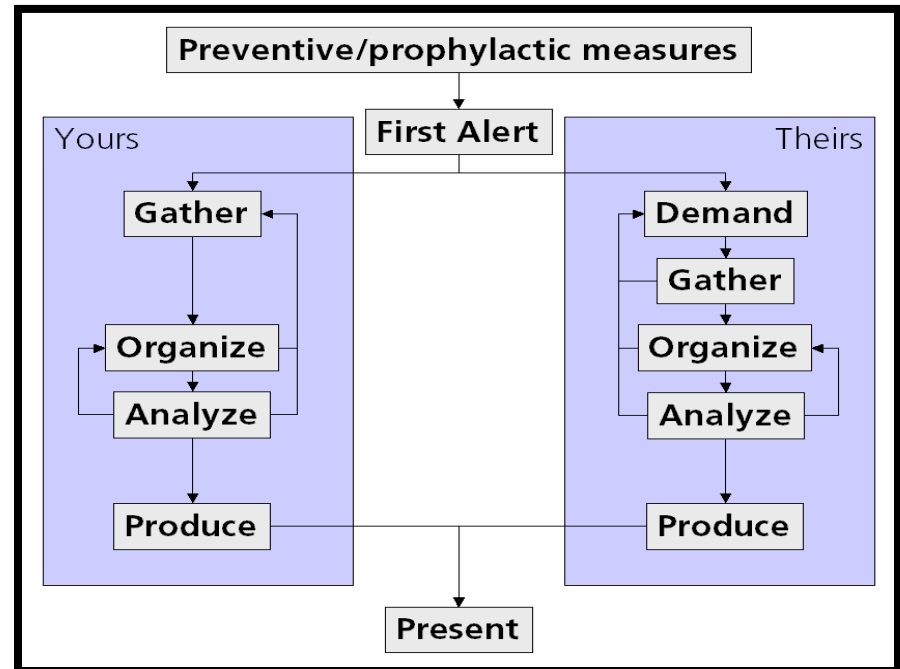
Getting Your Opponent's Data Overview



Getting Your Opponent's Data

Get Help

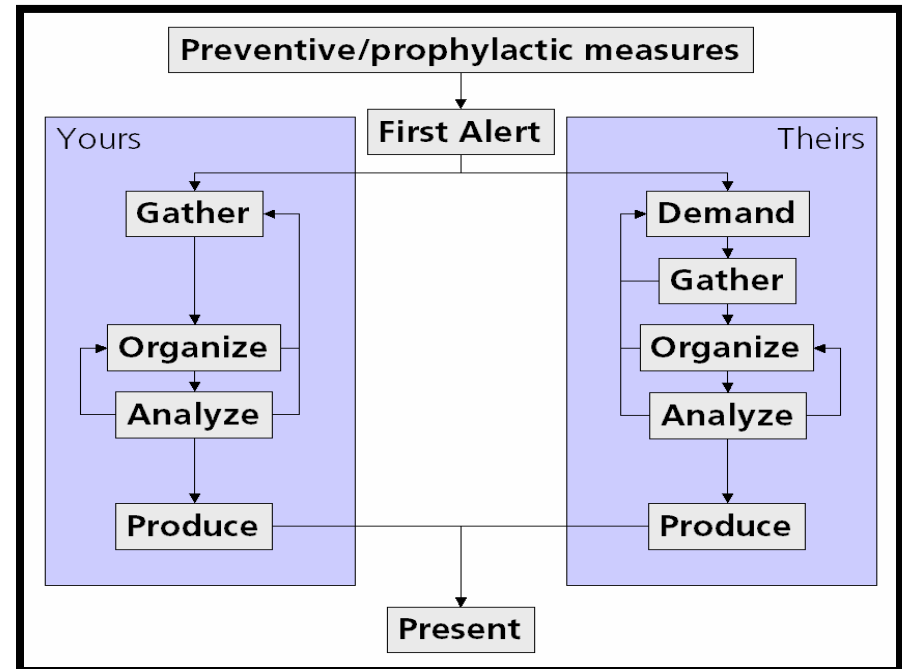
- ✓ Your Firm
- ✓ Your Client
- ✓ Computer Forensics Service Providers
- ✓ Electronic Discovery Service Providers
- ✓ Automated Litigation Support Providers
- ✓ CF/ED/ALS Software Providers



Getting Your Opponent's Data

Start Early

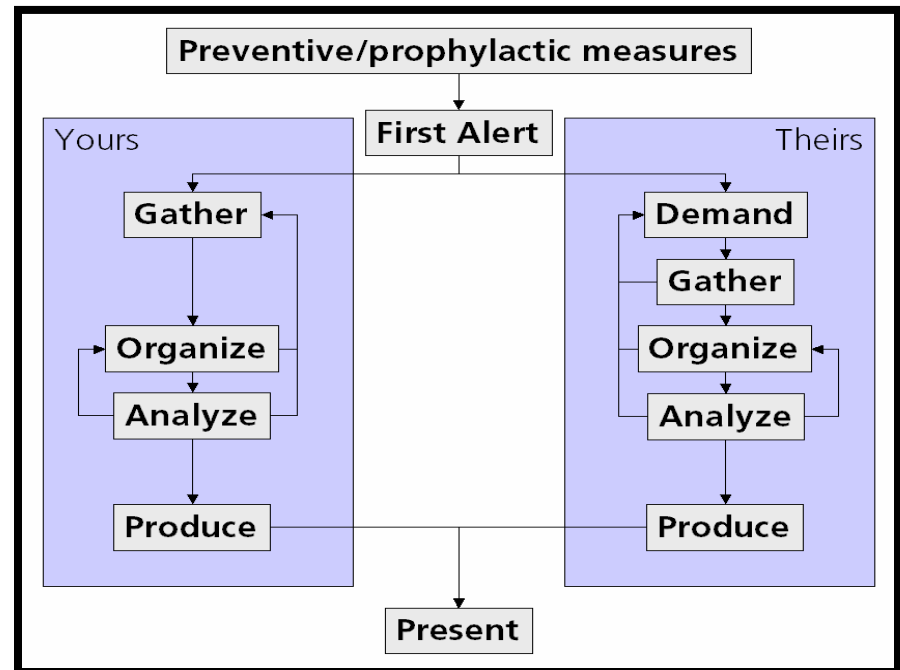
- ✓ Preservation Letter
- ✓ Informal Discovery
 - ✓ Ask Your Client
 - ✓ Search the Web, Other Online Resources
 - ✓ Scour Your Opponent's Paper Documents



Getting Your Opponent's Data

Formal Discovery

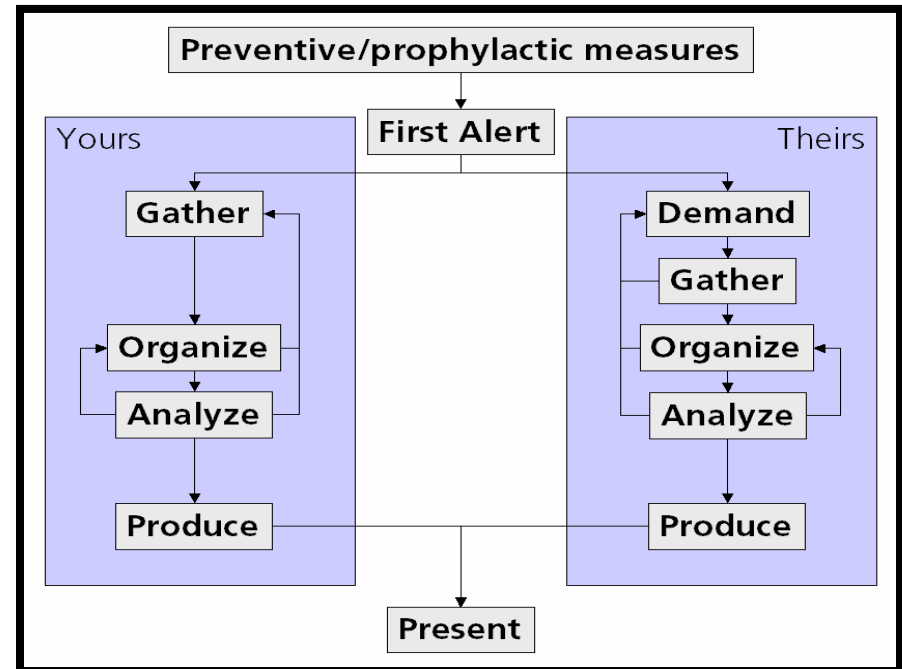
- ✓ Be Specific
- ✓ Only Ask For What You Want
- ✓ Use Full Range of Formal Discovery
- ✓ Agree On Ground Rules
 - ✓ Media
 - ✓ Format
 - ✓ Admissibility



Getting Your Opponent's Data

Assess What You Got

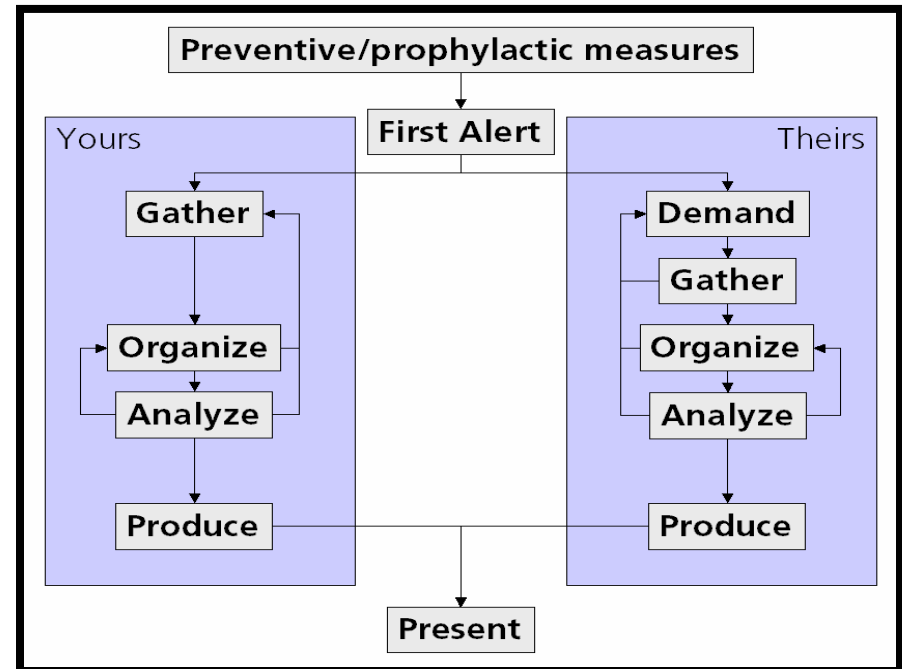
- ✓ Did You Get All of It?
- ✓ Are There Any Surprise Sources?
- ✓ Is There Anything Hidden?



Getting Your Opponent's Data

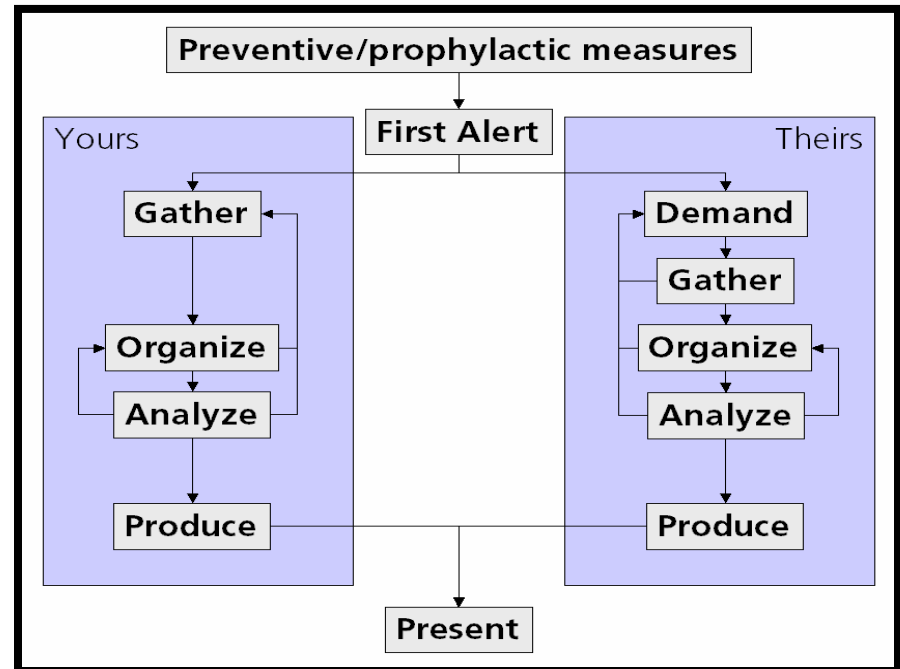
Test What You Got

- ✓ Search It
- ✓ Sort It
- ✓ Organize It
- ✓ Tear It Apart & Put It Back Together Again
- ✓ Send It To Your Client
- ✓ Send It To Your Expert



Getting Your Opponent's Data

Start All Over Again



Electronic Discovery Costs As A Factor

Sample Costs

Cataloging backup tape contents	\$150/tape
Restoring backup data to hard drives	\$150/tape
Capturing the contents of a hard drive for evidentiary purposes	\$1,000/drive
Restoring and analyzing data from the drive	\$2,800 (8 hours at \$350/hour)
Searching text of drives and similar media	\$1,400 (4 hours at \$350/hour)
Copying data to DVD, CD or hard drive	\$500 (4 hours at \$125/hour)
Loading data to litigation support database	\$500 (2 hours at \$250/hour)

Electronic Discovery Costs As A Factor

Selected Factors to Consider

Requesting Party		Responding Party
◀ broad	Specificity of Requests	targeted ▶
◀ no	Likelihood of a Successful Search	yes ▶
◀ yes	Available From Other Sources	no ▶
◀ emergency / oversight	Purposes of Retention	for current use ▶
◀ none	Benefits to Responding Party	business / litigation ▶
◀ substantial costs	Total Costs	low costs ▶
◀ requesting party	Who Can Control Costs Best	responding party ▶
◀ requesting party	Who Can Most Easily Pay	responding party ▶

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