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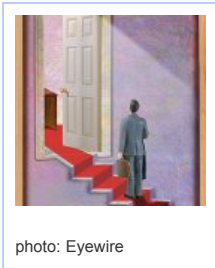
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## Book Review: '7 Steps for Legal Holds'

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I have not applied a legal hold in a corporate or large law firm setting, but John J. Isaza and John J. Jablonski told me how to go about it -- and why -- in "7 Steps for Legal Holds of ESI and Other Documents." The book explains how to implement a legal hold in seven easy steps and provides the legal and business drivers behind the holds that can be used to create more efficient business processes for an organization of any size.

When I first picked up the book, I thought: "What's the big deal?" Isaza and Jablonski made it clear. Federal and state courts are focusing on the legal duty to preserve potential evidence in litigation or government investigations, especially evidence stored in electronic form. Increasingly, cases are settling during the discovery phase because of the conspicuous absence or abundant presence of relevant electronic evidence. If evidence is absent, there is the chance your organization may face costly sanctions; if evidence is abundant, your organization may face a costly production that will require an expensive

preproduction review of documents for privilege.

Isaza and Jablonski are honest and cut to the chase in plain English. They readily admit that the legal hold, although a relatively new legal term, incorporates a legal duty to preserve evidence, which is not new. In fact, the legal hold reflects a time-honored public policy that is embedded into law: it is wrong to destroy evidence. They also bring the legal hold down to earth and instantiate it with fundamental concepts that operate on our daily lives, e.g., when implementing a legal hold, "timing is everything."

### TIMING IS KEY'

I find that the trickiest thing in the legal hold process is when to begin. The authors put that to rest in step one. "When an event occurs where an organization anticipates that litigation may follow, the organization has a duty to preserve evidence." This "trigger event" becomes the first step in the legal hold process that is the watershed: "Preserve too much too soon and there may be significant costs for collecting, storing, analyzing, and producing the relevant information. Preserve too little or too late and there may be expensive sanctions."

Like any workflow, the first step in a legal hold can determine your gait or stride in the next steps. Isaza and Jablonski provide a good foundation to identify when an organization has a legal duty to preserve evidence, e.g., when statutes, regulation or litigation demands it. They also delve into lessons learned from the "shred days" of *Samsung v. Rambus* and *Rambus v. Infineon* to bring home the importance of trigger events and show how unpredictable courts can be with spoliation issues. An appendix further discusses trigger events defined in case law, but it is not meant to be exhaustive.

The next step is an obvious one for lawyers: analyze whether the identified event triggers a legal duty to preserve evidence. But the authors do not attempt to turn readers into lawyers. Rather, they aim to provide a business process to determine whether a legal duty attaches. Toward that end, Isaza and Jablonski counsel readers on who should determine whether a legal hold is necessary. Interestingly enough, a lawyer may not be in the best position to answer that question. The authors also discuss what information needs to be gathered to make the decision and advise readers what to do if the organization does not see the need for a legal hold. Forgetting about the whole matter is not an option.


Further steps in the legal hold process bring the authors' experience to bear. Isaza is a named partner of Howett Isaza Law Group, which has an international records and information management consulting practice. Jablonski, a partner at Goldberg Segalla, consults with *Fortune* 500 companies on records management, retention schedules, and e-discovery policies and procedures. Together, they incorporate lessons learned from practice, common errors in legal holds, questionnaires to use in formulating your own legal hold policy or procedure, key questions to ask custodians and IT personnel on ESI, best practices in preservation, and guiding principles gleaned from the Federal Rules of Civil Procedure and materials from the Sedona Conference including "[The Sedona Principles: Best Practices Recommendations Principles for Addressing Electronic Document Production.](#)"

Isaza and Jablonski sprinkle the book with numerous little tidbits for the legal professional. For example, although the legal hold is commonly considered attorney-client privilege, "there is the potential that a hold notice may be subject to review by an agency, opposing counsel, or the court." The authors advise readers to draft it accordingly, with an understanding that it may become an exhibit in litigation. And don't issue a hold notice only once, they warn: "Cases and commentators agree that simply issuing a one-time notice is not enough to meet the legal requirements for implementing a legal hold."

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Absent from "7 Steps" is a discussion on the technology available to implement legal holds from the likes of **Exterro Fusion** and **PSS Systems Atlas**; or a discussion of how search technology incorporated in products like **Recommind Insite** and features in modern content and e-mail management systems facilitate legal holds. The authors do, however, discuss key areas to search for ESI from off-the-grid storage on laptops and cell phones to online data storage facilities and from third-party vendors and supplies and include an appendix devoted to the matter.

Although the book is a monograph, it is bound in a tabbed format that makes for an easy reference book to review material at any of the seven steps to the legal hold. It includes appendices loaded with examples of how misunderstandings of ESI lead to large spoliation sanctions, sample legal hold notices, policies and procedures. One index combines both case names and keywords.

Isaza and Jablonski don't have the last word on legal holds, but they certainly have the right ones, in seven, digestible steps, to get your organization started in fashioning a legal hold policy and procedure to respond to an event that triggers the duty to preserve evidence. In the end, you will want to get out there and put a legal hold on something.

*Sean Doherty is Law.com's legal technology editor.*

"7 Steps for Legal Holds of ESI and Other Documents," by John J. Isaza and John J. Jablonski. Lenexa, Kan.: Arma International, 2009. ISBN: 978-1-931786-53-9.

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