

TRANSCRIPT OF "BURIED ALIVE" TAPE

Organizations run on records, memos, letters, reports, plans, financial records, designs, research, contracts - on microfilm, computer memory, diskettes, tapes but especially on paper - tons of paper every day. Over seventy billion documents per year, an estimated five hundred seventy billion documents currently in storage in the United States alone. Managing the retention of this landslide of documents determining what must be saved and for how long, scheduling what can be destroyed and when, tracking records so they can be found when needed during year in, year out operations and under the gun of litigation can make the difference between your staying on top of the heap or getting buried alive.

On March 18, GFX Ltd. was notified of a lawsuit. Plaintiffs were seeking to recover damages for injuries allegedly caused by GFX products. Claims totaled millions of dollars. In a matter of days, the discovery process began. All records related to the charges had to be located and turned over to the plaintiffs. Hundreds of thousands of documents saw the light of day, many for the first time in years. Like an archeological dig, the document search unearthed an entire organizational culture, including the ways document retention practice sometimes fail to match document retention policy.

Ten years earlier, sweeping changes had been made in records management at GFX. All company records were surveyed by a team that included a vice president, an operations manager, a lawyer, a records manager and a financial officer. They issued a written document retention policy. Series of documents were to be retained into a timetable based on operational needs, legal requirements or long term archival plans. The timetable stipulated how long every document series should be kept within a department, when records were to be sent to a central storage facility and when and how they were to be routinely destroyed. Records such as routine correspondence, phone call notes, drafts, sketches were not to be classified for retention. Some documents were not to be retained beyond the day they were written. The program created a uniform filing system with a central catalog. Documents were segregated in categories, each with a date for systematic destruction. The records manager ran the program and took charge of an annual compliance audit of all departments, with the full cooperation of senior management. Throughout the year, employees were held responsible for seeing that complete and accurate records were retained as required, identified, stored, protected and appropriately disposed of. From the start of the program ten years ago, the objective was to clean out unnecessary records, free up costly space for more productive purposes and make retention and retrieval more efficient. But discovery revealed some people had other ideas.

The biography of just one letter shows how too many exceptions happened. August 16, 1982 to Mr. James S. Smith, Sales Manager, Acutime Corporation - subject: cut back on component costs, signed

by John J. Phillips, Manager of Purchasing. The time table said that routine vender correspondence should be separated in series marked to be destroyed without review after 12 months. But Phillips wanted to hang on to these records. He marked the file copy "Review one year". One year later, Phillips reviewed them and decided to keep correspondence with some key vendors for yet another year. His reason - "save these just in case..." The Smith letter was one of the "saves" that stayed in the department. On the next year's document purge date, two year old vender correspondence was scheduled to be destroyed wholesale but Phillips again culled out some correspondence. This time he filed them with related vender contracts. "These letters aren't contracts but I'll know where to find them". Then Phillips was transferred. Two years later, a secretary boxed vender contracts to go to records storage in compliance with the retention policy. File contents were not purged. Boxes were identified by project and contract number. No mention of correspondence. The files went into the dark for the specified three years. At this point, if someone had needed the vender letters, no one could have found them. At thirty-four months, records storage sent a form to check whether that series of contract records should be destroyed on schedule. Not sure exactly what was in them, the new office manager checked "save one year". Her reason "just in case". The Smith/Phillips letter lived on, unknown, unseen, uncalled for "just in case". Now that letter, because of its heading, related to component cost reduction has to be copied, dated, annotated, reviewed by lawyers and turned over to the plaintiff's attorney. Each of these steps cost time and money. "And that's only one document. We're finding thousands like it."

The discovery process continued. Week after week, they unearthed the results of hundreds of individual decisions to save documents that should have been systematically destroyed. Out of desk drawers, file cabinets, closets, storage shelves came things people didn't even think of as documents. Personal files, appointment books, polaroid snapshots, notes written on envelopes and on backs of meeting agendas and in the margins of yellow newsclips, computer disks, dictation tapes, video programs. One person threw out originals and but kept her own FYI copies. The unofficial prize went to some handwritten notes and numbers on a chinese take-out menu that had been filed, gravy stains and all, after a long forgotten late night meeting. This one case revealed only the tip of the iceberg. How many more documents erroneously and needlessly retained were hidden beneath the surface. At what cost per foot for storage alone. How many people, how many hours to locate and process them? Buried in an avalanche of excess records, GFX personnel were learning some costly lessons about document hoarding. Don't be a "just in case" document saver. Retain and destroy systematically. Segregate records for retention according to the retention timetable. Destroy series wholesale as soon as retention is not required. Retain only for vital operational, legal or archival needs. Do not retain unscheduled, temporary materials like drafts, reminder notes, worksheets or extra copies.

The lawsuit demonstrated that systematized retention worked like clockwork in most departments where records moved on schedule out into central storage. A form identified the contents and the retention period of each storage box. Recently, the system updated to bar coding.

The records center was designed to protect records from hazards such as fire, moisture and pests, theft, sabotage and espionage - disasters like earthquakes, floods, storms or explosions. And unauthorized use, disclosure or distraction.

Computer tapes, film, fiche and paper records were protected in climate controlled rooms. Records converted to film, microfilm or microfiche to save space were grouped by retention category. And a secure offsite facility, backup copies of vital records were preserved to help the organization get up and running again if a disaster wiped out the originals. Document transfer forms controlled the flow of records into the central file and were sure they were checked out only by authorized personnel. The system reduced the volume of documents stored and speeded search time wherever people went by the book. But some people, for various reasons, developed guerrilla retention systems of their own. As each informal, nonconforming cache of files was uncovered, you could almost hear the voices of the people who had originally saved them. "I'm not going to be hung up sending down to central storage everytime I need one of our old files." "I've got a right to keep my own sales diaries here at my fingertips." "Before we destroy these reports, make copies for my file, just in case." "Charlie's files? Stick them in the closet for now."

Out of a coat closet came two boxes of old dogeared files, identified only as "Charlie". "I forgot this stuff. Charlie retired last year, I just haven't had time to go through these files and see if there's anything there we ought to save." "The minute someone leaves, you're supposed to examine the person's files to determine what should be reassigned to another employee, or sent to central storage or destroyed. Just look at this heap." "This is nothing. You should see out at his house. I was there once. I couldn't believe how much junk from the office he had accumulated. That's Charlie. I mean, he saves everything, he's a packrat."

Later, in a deposition, another employee made a similar comment to the plaintiff's attorney. The very next day, the attorney knocked on Charlie's front door. "I've got a few things here in the corner." Sitting in Charlie's garage was a one man archive that had evaded the regular purges of departmental files. "I had no idea they could just come into my house and cart away my personal property." "They didn't, Charlie. These are not your personal property. They're documents about GFX, belong to GFX, should have been retained or destroyed at GFX. Why on earth did you keep all this stuff?" "I didn't want all this valuable information turned into confetti. For example, at the beginning, there was alot of debate about the basic design concept. Alot of

memos went back and forth, pros, cons, it was too expensive, this won't work. Listen to what this guy says..." "I read it, so did the plaintiff's lawyer. You know what this guy meant to say, I know what he meant, but how would this sound to a jury. It's loaded. All it needs is a trigger." "Do you think they'll try to make this into a smoking gun?" "Smoking gun? More like a nuclear warhead."

One of the problems with improperly retained records like the archive in Charlie's garage is that they may preserve a trail of ambiguous language, opinions, criticisms, remarks and even wise cracks that can turn into evidence at the expense of the organization. Documents like that should not have been created in the first place. Your wording should accurately reflect the organization's concerns with ethics, safety, compliance with laws and proper practices. A few careless sentences can turn into legal timebombs.

One of the produce development managers, Ann Stewart, had kept yearly chrono files, 3 ring binders containing every memo, report, plan, study or design going back more than ten years. She felt she had good reasons. "We need to have a history of the entire lifespan of a project as important as this." When the chrono files were examined during discovery, some things were clearly missing. For example, comments about alternate designs that had been rejected. Why were these particular documents missing? "It didn't sound good. Some hotheads would say things like, this is a killer, or we're nickel and diming this. Naysayer's comments badmouthing the entire project." Diffusing the files by getting rid of bad documents and keeping only good ones can blow up in your face. "Some people would call what Ann did quality control, eliminating defects in the records. But gaps in the record are as obvious as a few missing front teeth." When a court is informed that pages are missing from a bound ledger, dates are missing from a chrono file, index tabs are missing from a storage box, the gaps may do more damage than bad documents would have. Document retention programs are not to be used for "so called" quality control. Do not attempt to yank bad documents and keep only good ones. Retaining departmental chrono files may be inadvisable over the long term.

Document retention relies on regularly scheduled purges of the working files. The purge date comes at least once a year, like spring cleaning. Retain records not kept in the department are transferred to the records center for storage. Documents that don't have to be retained are collected for destruction. Destruction should be consistent, not sporadic. It should occur at regularly scheduled intervals. Series of files should be destroyed in their entirety. Not selectively by culling individual documents.

Sensitive documents should not be thrown whole or in reconstructable pieces in the dumpster. Sensitive or classified documents should be destroyed by shredding, pulverizing, burning.

"Memo to all department managers, from A. W. Black, Corporate Counsel. Subject: G-line document retention requirements. Date: today. Oh and mark this priority. Paragraph. GFX has been sued by plaintiffs alleging injuries caused by a G-line product. In the course of preparing for trial, GFX as defendant is required to turn over to the plaintiffs information and documents in a process called discovery. Paragraph. Destruction of any relevant materials in accordance with a normal document retention program should immediately be suspended. If you or your subordinates have custody of any records concerning this litigation, you should not dispose of them until the court has expressly permitted destruction. We will advise you in writing when that occurs. Failure to comply with these obligations may subject both the company and you to sanctions, fines and other penalties. Paragraph. The categories of documents currently called for by the plaintiffs lawyers concern product development, component costs, safety..."

The document retention program included a stop button procedure starting with a written notice of a discovery process to every department head. Despite this formal procedure, in one department, document destruction had not been stopped. One file category was missing the most recent years. The plaintiffs' lawyer smelled a possible smoking gun. What was found instead was a smoking shredder. By the time the destruction of documents was brought to a halt, many records on the list had been shredded. Hadn't the department manager received the notification? "These three year's worth of records were never transferred to central records. According to the schedule, we were never required to retain them. I figured I would save us alot of trouble by doing what the document retention policy says, just to get rid of them." But that's not what the document retention policy says. In the event of an investigation or lawsuit, it says in effect "stop shredding, start saving."

Another department used an indexing system that made it all but impossible to find requested documents. "Like hunting for a needle in a haystack. In fact, that was the idea. Some of these letters include customer complaints, stuff like that. They figured they could cause problems so they kind of buried them." Sanitized, shredded or buried, missing documents may have to be explained to investigators, a regulatory agency, a grand jury, a trial jury or a judge. "This was not a bona fide document retention and destruction policy but a sham designed to mask the purpose of eliminating documents which might be detrimental." In GFX, the judge rejected the document retention policy as a justification for failing to produce documents. "GFX must produce documents by close of day Monday..." the worse was yet to come "sanctions".

Before the case got rolling, department manager, Henry Vaughn, received a phone call from a friend in another division. The caller warned that legal action was pending. Vaughn instructed his assistant to get rid of all files that might be pertinent to the case. "Get rid of these immediately. I just want these destroyed

and destroyed quickly, Alice. Pour it into the soup." Monday morning, a discovery notice from the general counsel's office landed on Vaughn's desk. He took immediate action but it was not to stop the disposal of records. "The case is on. This discovery does not have to change our document destruction practices." Weeks later, discovery shifted from what was in the department's files to what was not. When had documents been destroyed and why? "We were thinning out the files to make more space. Normal procedure. I'm sorry but they're gone." But documents, like cats, seem to have nine lives. Duplicates of some of the destroyed records appeared in other people's files. Others were discovered still in word processor memory and on diskettes. And they could not erase the memories of the people who typed, duplicated or read the documents. In depositions under oath, employees and even best friends, testified that Henry Vaughn had ordered the destruction of documents. One month after the conclusion of the case, he was charged with destruction of evidence and perjury. The case they couldn't lose became one they couldn't win. A high price for deviation from document retention policy by a few people and departments. And the price went beyond the cost of a single lost case. There was the operating cost of years of records inefficiency, the handling cost of storing and retaining excess records, the legal costs of examining thousands of superfluous documents. Some people may have seen the document retention policy as making a mountain out of a molehill. To them, shortcutting the policy looked like an easy way out. In reality, it was a way to get in deeper. For some, it was a way to be buried alive.