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Agentic A.I. *Forensics* for Asset Recovery, Under *Kovel* Privilege.

A working note from the firm on the substrate underneath modern asset search and recovery — what agentic forensic systems actually do, why the work must live inside counsel's privileged architecture, the four protocols that hold it there, the case-law tailwind honestly characterised, and the ethics-and-fee architecture the firm carries.

EDITORIAL POSITION NOTE · THE RECOVERY SUBSTRATE

FOREWORD · THE FIRM'S POSITION

The firm is being asked the same question on repeat by counsel of record and by principal-side finance: **what should an A.I.-assisted recovery file actually look like, given that the binding constraint is no longer the legal theory or the forum, but the volume of evidentiary material that has to be read before the window closes?** The answer is architectural. The firm has been deploying agentic forensic systems — multi-step, tool-using, audit-trailed software pointed at terabytes of mixed-format material under counsel's direction — in support of asset search and recovery since the substrate matured to the standard counsel can stand behind. This issue records the working position: what the technology is and is not, why it must sit *inside* the Kovel privilege perimeter rather than alongside it, the four protocols that hold it there (retention & work-product architecture; zero-data-retention and sovereign-region substrate; cross-border discovery and production playbook; conflicts and disclosure matrix), the case-law tailwind honestly characterised — *likely, not assured · the forum court decides* — and the three-band fee architecture in which milestone recognitions are *fixed dollar, with a floor and a cap, not a percentage of recovery and not a share of counsel's fee*. Editorial, not legal advice; every recovery file should be carried by licensed counsel of record.

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FOREWORD · FROM THE READING DESK · LEGAL & FINANCE

A working position on *agentic forensics* under Kovel privilege.

The firm has been deploying agentic forensic systems — multi-step, tool-using, audit-trailed software pointed at large bodies of evidentiary material — in support of asset search and recovery work since the substrate matured to the standard counsel can stand behind. This issue records the working position: what the technology is and is not, why the work must live inside counsel's privileged architecture rather than alongside it, the protocols that hold it there, the case-law tailwind honestly characterised, the ethics-and-fee architecture, and what the firm does and does not promise. Editorial, not legal advice. Every recovery file should be carried by licensed counsel of record.

I. *The bottleneck has moved.*

Across the asset-recovery files the firm reads — sovereign, family-office, corporate, sanctions-driven, fraud-driven, insolvency-driven — the binding constraint is no longer the legal theory and is no longer the forum. It is the **volume of evidentiary material that has to be read, indexed, cross-referenced, and reduced to a working timeline** faster than the counterparty can move the proceeds and faster than the supervisory or judicial window will hold open.

A modern recovery file does not arrive as a thousand pages of documents in a banker's box. It arrives as terabytes of mixed-format material: corporate registries across a dozen jurisdictions, banking traces routed through three or four correspondent layers, vessel and aviation movements, telephony and messaging exports, leaked or production-produced email archives, on-chain transaction graphs, beneficial-ownership filings in jurisdictions whose registries have been opened and closed in alternating cycles, court filings from parallel matters in three or four forums, sanctions and trade-controls registers, and the negative space inside all of it — the entities, the dates, the routing patterns that *did not appear* where they should have.

The legal scaffolding to compel that material has been in place for a long time. The discovery instruments work; the supervisory channels work; the international-cooperation channels work, in the jurisdictions where they have ever worked. What has not been in place is the human-week budget to actually read what has been produced before the window closes. **Agentic forensic systems, deployed under counsel's direction, are the substrate that has begun to dissolve that bottleneck.**

This is the move the firm has been preparing the architecture for since the substrate became reliable enough to stand behind. It is also the move that produces the entire body of governance questions this issue exists to address. The technology compresses what used to be a six-month review into a working week. Compressing the review without putting the work inside the right privilege and ethics architecture multiplies the exposure of the principal, of counsel, and of any expert sitting alongside them. The discipline this issue describes is the architecture that keeps the compression honest.

> *The legal theory is rarely the constraint. The volume of material that must be read before the window closes is.* **Agentic forensic systems, deployed under counsel's direction, are the substrate that has begun to dissolve that constraint.**

II. *What agentic forensics actually is — and what it is not.*

An agentic forensic system, in the working definition the firm uses, is a piece of software that **(i)** pursues a defined investigative goal across many steps; **(ii)** calls tools on its own — document search, entity resolution, registry lookup, transaction-graph traversal, OCR, translation, geocoding, on-chain query, sanctions-list matching — against material that counsel has lawfully placed in front of it; **(iii)** holds state across a working session so that an entity found on Tuesday is the same entity surfaced again on Friday with the new context attached; **(iv)** produces, for every step it took, a *rendered audit trail* — the prompt, the tool call, the source span, the timestamp, the model identity, the operator on watch — that can be exhibited to a court or an arbitral tribunal alongside the substantive output.

It is not a generative chatbot pointed at a case file. A consumer-tier generative model, asked the same question, will compose a fluent-sounding answer with no source-span attribution, no audit trail, no entity-resolution discipline, and no guarantee that the entities or the figures or the dates inside the answer correspond to any document in the record. That output is not exhibitable, is not testable on cross, and is not something counsel can responsibly carry into a proceeding. The two operations look superficially similar at the prompt window; they are different categories of work product entirely.

Two further distinctions need stating on the open record:

- **Agentic forensics is not autonomous investigation.** The system pursues a defined goal inside a defined corpus under operator supervision and counsel direction. It does not decide what to investigate, who to investigate, or what to compel. Those decisions remain with counsel and the principal. The system is a force multiplier on the review and synthesis layer, not a substitute for the lawyer judging the file.
- **Agentic forensics is not a recovery *engine*.** It does not move money, does not freeze accounts, does not file process. It produces the indexed, timestamped, source-anchored evidentiary read against which counsel decides what process to file, in which forum, against which counterparty, on what timetable. The recovery itself is produced by the legal instruments counsel chooses to deploy.

What the substrate does deliver, when the discipline holds, is a sized compression: **review cycles that previously consumed entire associate teams for months can now be completed in days, with a source-anchored audit trail richer than the one a manual review historically produced.** That compression is the operating reason a recovery file in the present cycle can be advanced inside the window the counterparty has left open, rather than after the counterparty has closed it.

> *A generative chatbot composes a fluent answer with no source span and no audit trail. An* **agentic forensic system** *produces a rendered, source-anchored, exhibitable read against a defined corpus under counsel's direction. The two operations look similar at the prompt window. They are different categories of work product entirely.*

III. *Why the work lives under Kovel — and the honest hedge.*

The doctrine the firm anchors this work to is the one most U.S.-trained counsel recognise by the surname of the 1961 Second Circuit decision: a non-lawyer expert, retained by counsel under a written engagement that is explicit on the translator-of-fact role and explicit on the privilege intent, can be brought inside the attorney-client privilege so that the expert's communications with counsel, and the expert's work product produced on counsel's direction, are treated as the lawyer's own. **The principle is foundational. The protection is not assured.**

Two layers of work product sit alongside the privilege itself. The first — *opinion* work product, the mental impressions, conclusions, and legal theories of counsel and counsel's agents — is held to a near-absolute standard against compelled disclosure in U.S. federal practice under FRCP 26(b)(3) and the line of authority running back through *Hickman v. Taylor*. The second — *fact* work product, the documents and tangible things prepared in anticipation of litigation — is qualifiedly protected and overcome on a showing of substantial need and undue hardship. The architecture this issue describes is built to make the agentic-forensic work product, at the substrate level, indistinguishable in form from work product the firm has been producing for counsel manually for a decade: the same retention papers, the same opinion-versus-fact split, the same source-anchoring discipline, the same audit trail.

The honest hedge: privilege determinations are made by the forum court, not by the firm and not by counsel. They are made on the facts of the engagement, the facts of the substrate, the conduct of the parties around the file, and the forum's own posture on each of the threshold tests. A privilege analysis that is rigorous, that is documented contemporaneously, and that holds up across the four protocols described in Section V is the discipline that produces the strongest defensible posture — **likely, not assured. The forum court decides.** Every recovery file should proceed on that understanding.

Three threshold tests the engagement must satisfy from the first day forward, before the substrate is allowed near the file:

- **Counsel retains the expert.** The engagement letter is signed between counsel and the firm, not between the principal and the firm. The principal is the beneficiary; counsel is the client of record for the agentic-forensic substrate. Without that single fact, the privilege analysis does not start in the position the doctrine contemplates.
- **The expert role is the translator-of-fact, on the open record.** The engagement letter recites, in plain language, that the firm is retained to translate, index, and synthesise the evidentiary record so that counsel can render legal advice. The firm does not render legal advice. *Upjohn*-style scope notes are circulated to every operator with access to the file.
- **The substrate operates inside counsel's privilege perimeter.** The technical substrate — inference, retrieval, indexing, storage — runs inside an environment counsel has approved, with zero-data-retention written into every vendor relationship, with no training of vendor models on the file, with logs the firm controls or no logs at all, and with the audit-trail discipline described in Section II preserved end-to-end. A consumer-tier prompt window pointed at the same file collapses the analysis on the first cross-examination.

> *The privilege protection is foundational; the protection is not assured. The discipline the firm runs to produces the strongest defensible posture* — likely, not assured. The forum court decides.

IV. *The case-law tailwind, honestly characterised.*

Two strands of authority are worth describing on the open record, because both are routinely overstated in the trade press and both deserve the more careful read.

Strand one — cross-border discovery in aid of foreign proceedings. The U.S. statutory pathway permitting a litigant in a foreign proceeding to obtain documentary and testimonial evidence from persons found in a U.S. judicial district has been in active use for decades. The 2025–2026 docket has continued to refine the boundaries: which foreign tribunals qualify as the kind whose proceedings the statute is intended to assist; how the discretionary factors a U.S. court weighs are to be applied where the requesting party is also a litigant in parallel U.S. process; how the requested material's posture in the foreign forum cuts for and against the application. The pathway remains alive and useful. It is also — and this is the part the trade press tends to leave out — **granted at the discretion of the U.S. court**, applied on the facts before the court, and not a guarantee that any particular application succeeds. The instrument the trade press tends to gesture at is *28 U.S.C. §1782*, and the 2025–2026 line running through the Second Circuit's *Banoka* decision and the parallel Ninth Circuit authority has refined — not displaced — the discretionary framework: the path is alive and useful, the path is not automatic. A recovery file that assumes the application as a given is not posturing the file honestly.

Strand two — the privilege treatment of A.I.-assisted work product itself. The 2025–2026 line of U.S. trial-court rulings has, on the working read, moved the centre of gravity toward recognising that work product prepared by counsel's non-lawyer agents using A.I. substrate — under written engagement, with retention papers in order, with the translator-of-fact role explicit, and with the audit trail intact — sits inside the same privilege analysis as work product prepared by the same agents without that substrate. The direction of travel is constructive. A trial-court ruling is **persuasive authority and the law of the case it was decided in**; it is not circuit law and it is not a national rule. The decision that has drawn the most attention — Judge Rakoff's opinion in the *Heppner* matter in the Southern District of New York — is, on the honest read, persuasive trial-court authority sitting atop the §1782 line described above; it is read carefully by counsel preparing similar work product, and it is read for what it is. Counsel reading those rulings on a live file should read them as the encouraging trend they are, against the careful threshold tests Section III describes, in the forum that will actually decide the question.

The honest read across both strands: **the substrate is operating into a more permissive legal weather than it was operating into two years ago.** That is the tailwind. The tailwind is not the case. The case is still made on the facts, in front of the forum that decides it, against counterparties who will read every protocol the file ran on.

> *The substrate operates into more permissive legal weather than it did two years ago.* **The tailwind is not the case.** *The case is made on the facts, in front of the forum that decides it.*

V. *The four-protocol operating annex.*

The discipline the substrate has to hold to is published, on the open record, as four protocols. They are written so that any counsel of record can read them, mark them up, and instruct the firm to operate against them on day one of an engagement. No counsel is being asked to take any of this on trust.

Protocol A — Retention & Work-Product Architecture. The engagement letter runs from counsel of record to the firm. The translator-of-fact role is recited on the face of the paper. Opinion work product is kept inside counsel's tenant and is never written to the substrate. Fact work product produced on the substrate is held in a tenant counsel controls, under a written privilege legend on every artefact, with the FRCP 26(b)(3) opinion-versus-fact distinction reflected in the file structure itself. *Hickman*, *Adlman*, *Upjohn* are not citations on a wall; they are the operating posture every artefact is sized against.

Protocol B — Zero-Data-Retention, No-Training, Sovereign-Region Substrate. Every vendor relationship the substrate calls into carries contractual zero-data-retention, contractual no-training on file content, sovereign-region deployment in the jurisdiction counsel selects, principal-held or counsel-held encryption keys where the vendor offers them, and an indemnification register for breach. The default counterfactual — a consumer-tier prompt window run by an associate — is prohibited on the file from the first day. A vendor that cannot meet the protocol does not touch the substrate; the work routes to a vendor that can.

Protocol C — Cross-Border Discovery & Production Playbook. The substrate carries a written playbook for every cross-border instrument the file may need: the U.S. statutory discovery pathway for foreign proceedings, third-party document subpoenas in U.S. federal practice and in the parallel English, EU, and Gulf instruments, the international-cooperation channels for banking traces and corporate records, and the production-side discipline for material that originates in the substrate (privilege log standards, redaction discipline, source-span citation discipline, audit-trail export format). The playbook tells counsel *which instrument is which*, not *which instrument will win*; the choice and the filing are counsel's.

Protocol D — Conflicts & Disclosure Matrix. The firm runs and refreshes a conflicts matrix that surfaces, in writing, the categories of adjacent engagements held under separate seals that could implicate an imputed conflict on the file. The matrix surfaces categories even where named seals foreclose individual identification, so that counsel and the principal can read the imputed-conflict vector on the record and instruct the firm to decline, segregate, or carry forward on terms the principal sets. The discipline is contractual and ongoing, not a one-time disclosure at intake.

> *Four protocols, published, on the open record.* **A** *retention & work product.* **B** *ZDR / no-training / sovereign-region substrate.* **C** *cross-border discovery & production playbook.* **D** *conflicts & disclosure matrix. Counsel reads them, marks them up, and instructs the firm against them.*

VI. *What "supporting legal and finance" actually means.*

The substrate sits behind two functions that already exist inside any institution carrying a recovery file: **counsel of record**, and the **treasury / CFO / general-counsel-for-finance function** that has to size, finance, account for, and report on the recovery exposure. The firm does not displace either. It augments both.

Behind counsel of record, the substrate produces the indexed, source-anchored, audit-trailed read against which counsel decides what process to file, in which forum, against which counterparty, on what timetable. The deliverables are familiar to any litigation partner: a working chronology, an entity map, a transaction-flow read, a cross-jurisdictional registry summary, a privilege-aware production register, a witness-and-custodian map, and a candidate-process matrix. The substance is what counsel has always asked an investigative team to produce. The substrate is the layer that lets it be produced in days rather than months, with a richer audit trail than the manual process produced, against a corpus that would have been beyond a reasonable manual review budget.

Behind the finance function, the substrate produces the sized, defensible read the CFO and the controller need to position the exposure properly: a probability-weighted recovery-range read against the file, the timing assumptions behind it, the legal-fee and expert-fee envelope across the next twelve to twenty-four months, the accounting posture (contingent-asset versus contingent-gain, jurisdiction-by-jurisdiction tax treatment of recoveries, insurance-recoverable interaction), and the disclosure posture for the regulated reporting cycle if the principal is a regulated reporter. The treasury function gets a read the file can support; it does not get a number the file cannot.

The candid framing the firm carries on both surfaces: **the work-product itself remains counsel's and the principal's; the substrate is a sub-vendor capability sitting inside the file at the counsel-and-principal's direction.** When the file completes, the work product is counsel's file, the audit trail is counsel's file, the source corpus and any derived indices are counsel's file. The firm retains a contractually-defined operational artefact register only as long as the principal authorises and counsel directs.

> *The substrate does not displace counsel and does not displace the finance function. It produces the indexed, audit-trailed read against which counsel files process and the finance function sizes exposure.* **The work product remains counsel's and the principal's.**

VII. *The ethics-and-fee architecture — milestones, not a percentage of recovery.*

The firm carries a three-band commercial architecture on recovery files, written so that the ethics posture is the same posture regardless of which band a particular engagement runs against. The bands are described here in the abstract; specific bands are negotiated with counsel on a file-by-file basis under the engagement-letter architecture Protocol A describes.

- **Band I — Scoping.** A fixed-fee, time-boxed first phase that returns, in writing, the firm's reading on the file's recovery posture, the substrate work the firm proposes to do, the protocol sign-off, the conflicts matrix output, and the candidate process map. Band I commits neither side beyond the band itself; it produces the working register the principal and counsel use to decide whether to proceed.
- **Band II — Phased Substrate Work.** A fixed-fee-per-phase architecture for the substrate work itself: ingest, index, entity-resolve, transaction-trace, registry-cross-reference, timeline, candidate-process matrix, production-aware export. Each phase has a defined deliverable, a defined fee, and a defined window. The principal pays for work delivered; counsel directs each phase.
- **Band III — Milestone Recognitions on Sized, Counsel-Filed Outcomes.** Where the engagement reaches a defined, counsel-filed, court-or-tribunal-recognised outcome — an order, a confirmed cleared sum, a sized settlement — the engagement letter may carry a schedule of *fixed-dollar milestone recognitions* attached to those defined events. **Each milestone is a fixed cash amount, not a percentage of any recovery, not a share of counsel's fee, not litigation funding, with a floor and a cap written on the face of the paper.** The mechanism is structured to fall inside the ethics rules of every forum on the file. The architecture is reviewed and validated, per-forum, with counsel of record before execution; the U.S. fee-sharing rule (the line of Model Rule 5.4 jurisdictions follow) and the parallel rules in English, EU, and Gulf practice each get their own read.

Two further structural commitments sit on the face of the engagement letter on every file. **One:** the firm is not a non-lawyer-owned legal services provider; the firm does not practise law, does not appear in any forum, and does not exercise judgment reserved to counsel. **Two:** the firm does not finance the litigation; the firm is paid for substrate work delivered, and the milestone-recognition architecture is consideration for the sub-vendor capability, not a share of any recovery. Counsel of record validates the architecture for the forum before execution. **If the rules of the forum do not permit Band III, Band III does not run on the file.**

> *Three bands.* Scoping — *fixed fee.* Phased substrate work — *fixed fee per phase.* Milestone recognitions — *fixed-dollar, on counsel-filed sized outcomes, floor and cap, not a percentage of recovery, not a share of counsel's fee, validated per-forum against Model Rule 5.4 and the parallel rules of the forum.*

VIII. *The firm's commitment, in writing on the open record.*

The firm's standing posture on the recovery substrate, calibrated for this surface, is the posture it carries on every engagement.

The firm carries a published **four-protocol operating annex** — retention & work product, ZDR / no-training / sovereign-region substrate, the cross-border discovery and production playbook, and the conflicts and disclosure matrix — that any counsel of record can read, mark up, and instruct the firm against on day one. The firm carries a **three-band commercial architecture** — scoping, phased substrate work, milestone recognitions — written so the ethics posture is the same posture regardless of band, and so the milestone architecture falls inside the rules of the forum or does not run on the file. The firm does not displace counsel and does not displace the finance function; the work product remains counsel's and the principal's.

The standing first conversation the firm offers, for a recovery file where counsel of record is in place and the substrate work is the question, is a **fixed-fee scoping band** — time-boxed, paid, with a written deliverable that returns the firm's reading on the file's recovery posture, the proposed substrate work, the protocol sign-off, the conflicts-matrix output, and the candidate process map. The deliverable does not commit either side beyond the scoping band. It produces the working register on which counsel and the principal decide whether to proceed.

Two closing posture lines, in writing on the open record.

- **The substrate is not the case.** The case is made on the facts, by counsel of record, in front of the forum that decides it. The substrate is the discipline that lets counsel make the case inside the window the file has left open.
- **Privilege is foundational; the protection is not assured.** The architecture this issue describes produces the strongest defensible posture: *likely, not assured. The forum court decides.* Every recovery file should proceed on that understanding.

This issue is editorial. It is **not legal advice**, not tax advice, not accounting advice, not regulatory advice, and not investment advice. Every recovery file should be carried by licensed counsel of record; every architectural posture described above should be validated with counsel against the rules of the forum before execution.

> *The substrate is not the case. The case is made on the facts, by counsel of record, in front of the forum that decides it. The substrate is the discipline that lets counsel make the case inside the window the file has left open.* **Likely, not assured. The forum court decides.**