



The Information Lifecycle During Legal Disputes: What Lawyers Need To Know

Prepare for: Erie County Bench-Bar Meeting
October 15, 2026

Agenda

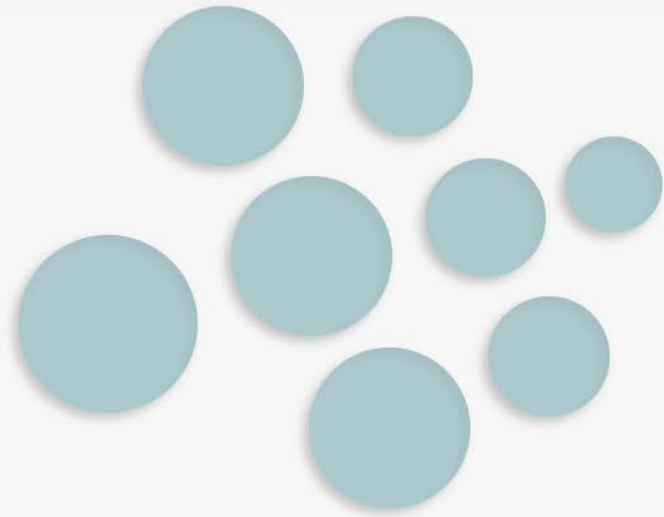
Electronic Discovery Reference Model: What Lawyers Need to Know

Lawyer's Primer: Identifying and Preserving Your Clients' Data

Defensible Data Collections

Mobile Devices – A Trove of Important Data

What Do Courts Have to Say About eDiscovery Technology?

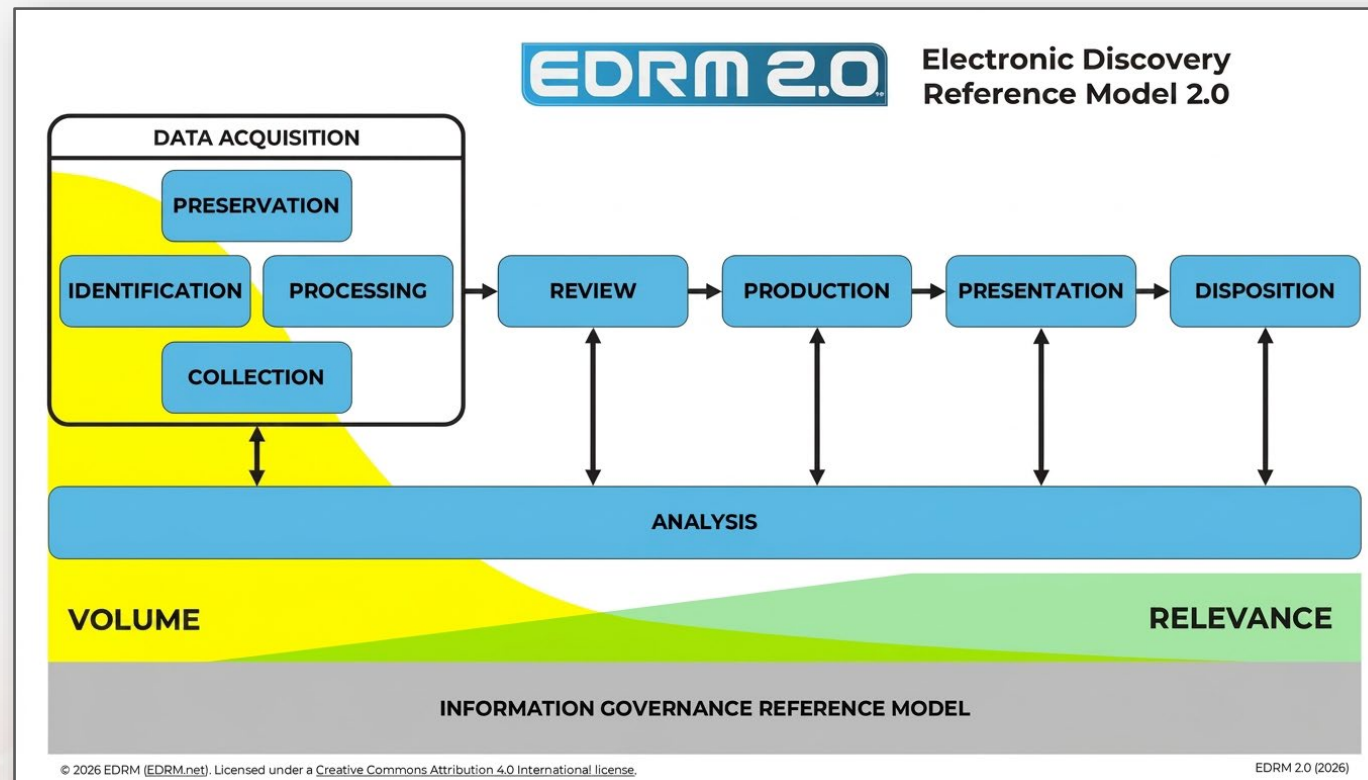


Electronic Discovery Reference Model – Your Roadmap!



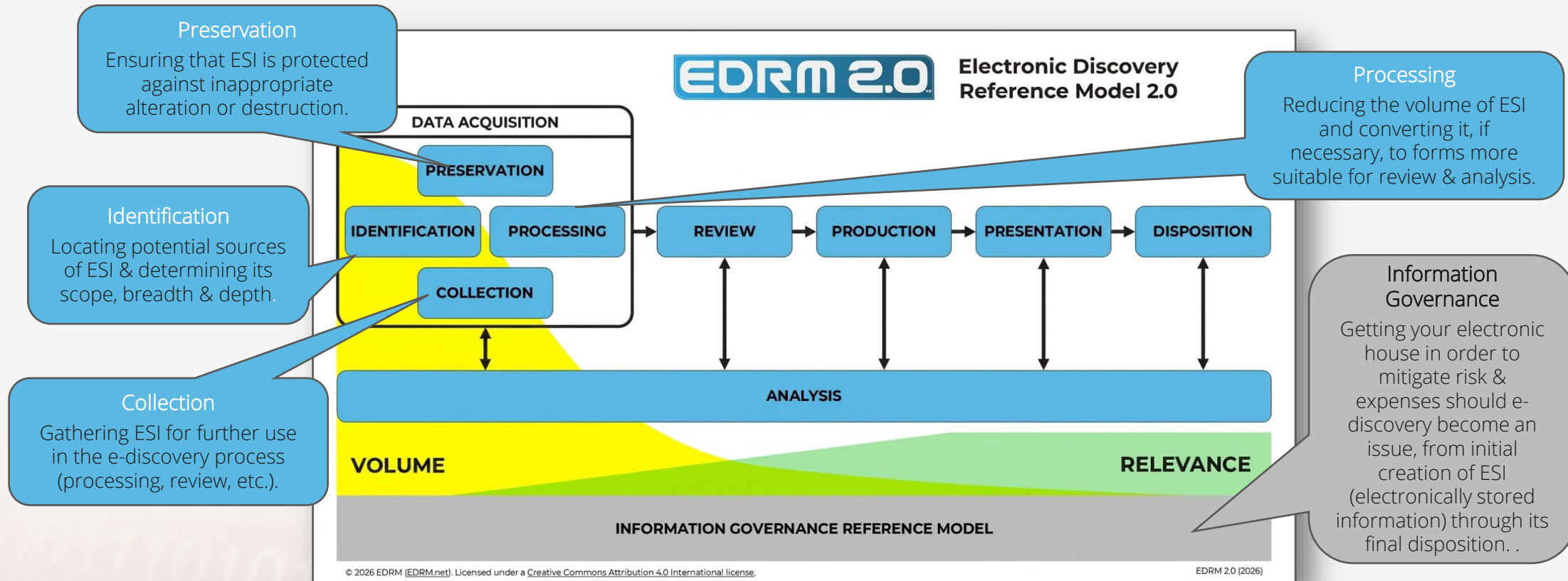
EDRM Workflow

Electronic Discovery Reference Model (“EDRM”) -- evidence identification, collection, processing, review and production



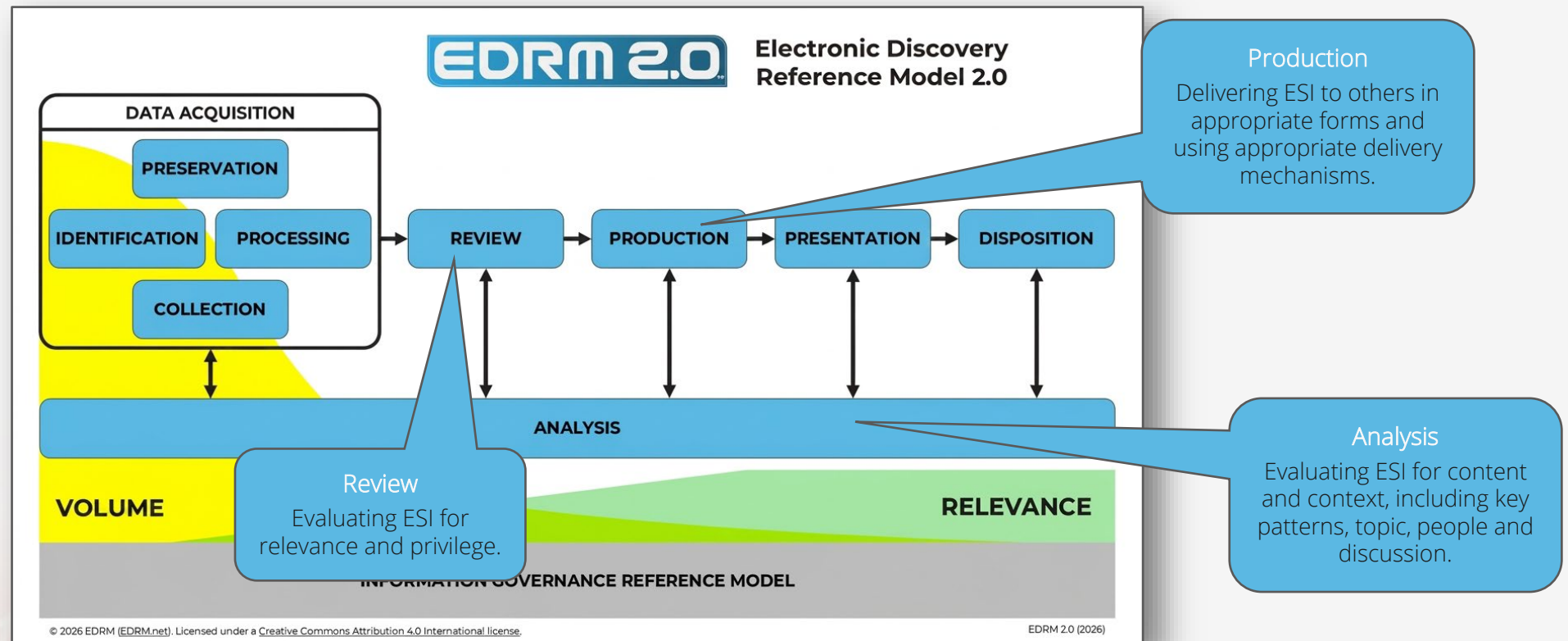
EDRM Workflow

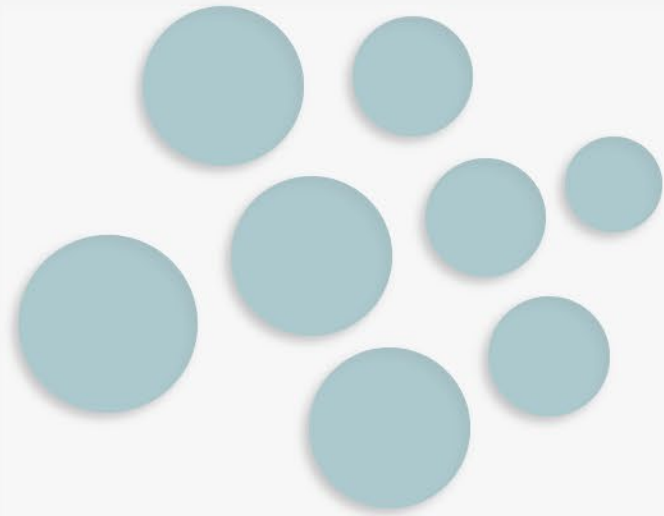
Electronic Discovery Reference Model ("EDRM") -- evidence identification, collection, processing, review and production



EDRM Workflow

Electronic Discovery Reference Model (“EDRM”) -- evidence identification, collection, processing, review and production





An ESI Primer: How To Defensibly Identify and Locate Key Evidence



Who Has Important ESI? Custodial Data Sources

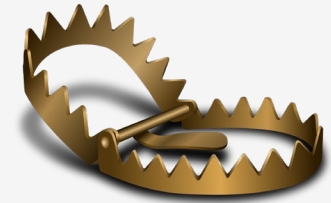
- Has a preliminary investigation into who likely has evidence been conducted?
 - If yes: who conducted the interviews, who was interviewed, and when did the discussions occur?
 - If no: work with the client to develop a custodian list, as well as scheduling. Be sure to either guide, or ideally, attend, those meetings, for privilege purposes.
- Keep a log: track the number/identity of custodians, along with evidence sources.
 - Custody, access or control! Are there records related to comparators that need to be preserved, text messages at issue, social media, email or internet activity logs?
- Think beyond current employees: Are there any former employees, or employees that may depart in the near future, that may have relevant data?



Evidence Log

Evidence No.	Custodian	Date/Time Received	Date/Time Collected	Collected/Received By	Collection Method	Description of Evidence
2175-028-001		N/A	06/27/2023 01:43 PM	Freddie Dyroff	M365	M365 collection of [REDACTED] email data
2175-028-002		N/A	06/27/2023 01:43 PM	Freddie Dyroff	M365	M365 collection of [REDACTED] email data
2175-028-003		N/A	06/27/2023 01:43 PM	Freddie Dyroff	M365	M365 collection of [REDACTED] email data
2175-028-004		N/A	06/27/2023 01:43 PM	Freddie Dyroff	M365	M365 collection of [REDACTED] email data
2175-028-005		N/A	06/27/2023 01:43 PM	Freddie Dyroff	M365	M365 collection of [REDACTED] email data
2175-028-006		N/A	06/27/2023 01:43 PM	Freddie Dyroff	M365	M365 collection of [REDACTED] email data
2175-028-007		N/A	06/28/2023 01:10 PM	Kurt Petro	M365	M365 collection of [REDACTED] email data
2175-028-008			06/28/2023 01:12 PM	Kurt Petro	M365	M365 collection of [REDACTED] email data
2175-028-009			06/28/2023 01:14 PM	Kurt Petro	M365	M365 collection of [REDACTED] email data
2175-028-010		N/A	06/27/2023 05:45 PM	Freddie Dyroff	M365	M365 collection of [REDACTED] SharePoint data
2175-028-011			06/27/2023 05:46 PM	Freddie Dyroff	M365	M365 collection of [REDACTED] SharePoint data
2175-028-012			06/27/2023 05:46 PM	Freddie Dyroff	M365	M365 collection of [REDACTED] SharePoint data
2175-028-013			06/27/2023 05:47 PM	Freddie Dyroff	M365	M365 collection of [REDACTED] SharePoint data
2175-028-014			06/27/2023 05:47 PM	Freddie Dyroff	M365	M365 collection of [REDACTED] SharePoint data
2175-028-015			06/28/2023 02:32 PM	Kurt Petro	M365	M365 collection of [REDACTED] SharePoint data
2175-028-016			06/27/2023 05:51 PM	Freddie Dyroff	M365	M365 collection of [REDACTED] SharePoint data
2175-028-017			06/28/2023 02:33 PM	Kurt Petro	M365	M365 collection of [REDACTED] SharePoint data
2175-028-018			06/28/2023 02:34 PM	Kurt Petro	M365	M365 collection of [REDACTED] SharePoint data
2175-028-019		N/A	06/27/2023 06:35 PM	Freddie Dyroff	FTK Imager	HP Compaq SN: 2UA3230V1Z
2175-028-020		N/A	06/27/2023 06:21 PM	Freddie Dyroff	FTK Imager	Lenovo ThinkCentre SN: MJ0E3T03
2175-028-021				Kurt Petro	FTK Imager	HP Zbook Powe G9, SN: 5CD223751L
2175-028-022			06/27/2023 04:15 PM	Kurt Petro	Cellebrite	Samsung Galaxy S22 (SM-S901U), SN: R5CT61L52TT
2175-028-023			06/28/2023 10:05 AM	Kurt Petro	Cellebrite	Samsung Galaxy S22 (SM-S901U), SN: R5CT608M43K
2175-028-024			06/29/2023 07:20 AM	Freddie Dyroff	Cellebrite	Motorola Edge 5G UW (2012) (XT2141-1), SN: ZY22F35QRD
2175-028-025			06/28/2023 12:47 PM	Kurt Petro	Cellebrite	Samsung Galaxy S22 (SM-S901), SN: R5CT5INVZ3T
2175-028-026		06/28/2023 10:35 AM	N/A	Kurt Petro	Other	[REDACTED] Paylocity Master Employee Report uploaded to Sharefile by [REDACTED]
2175-028-027		N/A	06/27/2023 06:32 PM	Freddie Dyroff	FTK Imager	[REDACTED] folder in N. O. Shared Folder
2175-028-028		N/A	06/27/2023 06:28 PM	Freddie Dyroff	FTK Imager	HP ZBook SN: 55G015DQRQ
2175-028-029		06/28/2023 08:35 AM	N/A	Kurt Petro	Other	[REDACTED] folder from Network Share Drive uploaded to Sharefile by [REDACTED]
2175-028-030		06/28/2023 03:41 PM	N/A	Kurt Petro	Other	Organization Chart uploaded to ShareFile by [REDACTED]
2175-028-031		06/28/2023 03:43 PM	N/A	Kurt Petro	Other	[REDACTED].zip uploaded to Sharefile by [REDACTED]
2175-028-032		06/28/2023 04:06 PM	N/A	Kurt Petro	Other	[REDACTED] Expense Report files uploaded to Sharefile by [REDACTED]
2175-028-033		06/30/2023 10:02 AM		Kurt Petro	Other	Files provided via Dropbox by [REDACTED]
2175-028-034				Marie Perry		[REDACTED] v. [REDACTED], No. 1:23-cv-00822-0230714050400.zip - provided by [REDACTED] via [REDACTED] FileShare
2175-028-035		07/18/253 2:16 PM	N/A	Kurt Petro	Other	[REDACTED] call reports uploaded to Sharefile by [REDACTED]
2175-028-036		Fri 7/21/2023 10:21 PM		Eric Lemons	Other	[REDACTED] 01152 - 001796.zip - provided by [REDACTED] via [REDACTED] FileShare
2175-028-037		Mon 7/24/2023 10:18 AM		Eric Lemons	Other	[REDACTED] 002.zip - provided by [REDACTED] via [REDACTED] FileShare
2175-028-038		07/27/2023 05:58 AM				[REDACTED] 001797 [REDACTED] 001922.zip
2175-028-039		07/31/2023 06:14 PM		Marie Perry		[REDACTED] 002 - Re-Prod.zip - provided by [REDACTED] via [REDACTED] FileShare

Preservation Practices – What You Don't Know CAN Hurt You



- What is the relevant time period?
 - For ESI: consider reasonable ranges for creation, last modified, or receipt dates. Those metadata fields could be critical.
- Client Systems (M365, network data, systems of record): Have there been changes impacting data retention in key systems during the key time period?
- Retention Periods:
 - How far back do the relevant custodians' data go by category of ESI type?
 - What are applicable document retention/destruction policies for this time frame and how do they impact the data?
- Legal Holds: A retention period, "on steroids . . ."

A code assigned to the record type in order to easily classify the record in electronic or hardcopy storage systems.

A grouping of records according to their particular business function.

A brief description of the record type.

Category: Finance / Accounting / Tax

RRS CODE	RECORD TYPE TITLE	RECORD TYPE DESCRIPTION AND RETENTION
FIN-22	Finance / Accounting / Tax Banking / Cash Processing	Records relating to banking and cash management activities Examples include: deposits, statements, cash management reports, cancelled checks, other account/wire transfers, account set-up and management

A representative listing of familiar documents that are included within a particular record type.

The period of time the record type must be retained, for legal, regulatory or business purposes.

RETENTION REQUIREMENT: 7 YEARS

REGULATORY CITATION	RECORDS SUMMARY FOR CITATION	RETENTION PERIODS
— 13 CFR 107.600(c)(2)	Accounting and financial records	6 years
— 17 CFR 210.2-06	Records relevant to the audit or review which include work papers forming the basis of the audit, correspondence, etc.	7 years
— 26 CFR 1.6050I-1(e)(3)(iii)	Information returns re cash transactions in excess of \$10,000	Active + 5 years
— 31 CFR 1010.420	Reports of foreign financial accounts	5 years
— 31 CFR 1010.430 (d)	Records of foreign financial accounts, including copies of checks, drafts, monetary instruments, investment securities, or other similar instruments	5 years
GA Ga. R. & Regs. 80-10-1-.01 (28)(a)-(e)	International: accts with foreign banks; records of trnf of more than \$10M; \$10M remit/trnf copy; \$10M+ check; \$10M rcvd	5 years
GA O.C.G.A. 7-1-687.1 (a)	Check sold; GL; settlement sheets recvd; stmts and bank reconcils; outstanding checks; check paid; agents; current and money trans	5 years

State, federal, or international regulations that provide minimum required retention periods for the particular record type.

FIN-30

**Finance / Accounting / Tax
Journals / Ledgers**

Records used to transfer charges between accounts and summarize account information

Examples include: general ledgers, chart of accounts, journal entries/support, general ledger, reviews/changes, daily balancing ledger postings

RETENTION REQUIREMENT: 7 YEARS

REGULATORY CITATION	RECORDS SUMMARY FOR CITATION	RETENTION PERIODS
— 13 CFR 107.600(c)(2)	Accounting and financial records	6 years
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Legal Hold: A Critical First Step

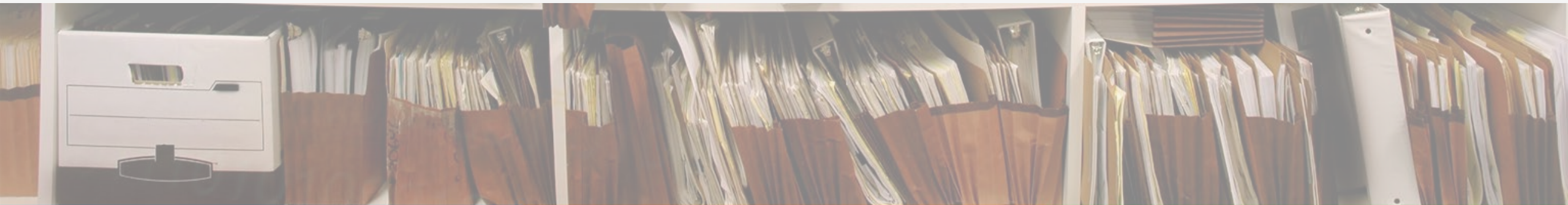
- Has a written litigation hold been issued? Key aspects:
 - Directive to not delete, modify or alter ESI subject to the hold
 - Explanation of what information falls within the litigation hold
 - Affirmative steps that need to be taken for preservation purposes (including by IT)
 - Measures that must be avoided in order to ensure metadata is preserved (in layman's terms)
 - A clear definition of ESI and the places that it may reside that are often forgotten, such as personal phones or personal computers
 - Contact info for who will answer questions

Legal Hold: A Critical First Step (Cont'd)

- Fully Informed Hold: does the hold writer understand the general IT infrastructure, deletion and retention policies, etc.? (e.g., M365 autodelete settings)
- Confidential matters: is there ESI that should be preserved without certain employees' knowledge, due to confidentiality concerns or other pending litigation issues, etc.?
- Iterative Process: have calendar reminders been set to make sure updates are provided and that the recipient list is expanded as the case proceeds
- Third Parties: Are there any third parties that should receive a written hold?

Does the Client Have to Keep Everything? Proportionality Analysis

- Understand the case and any key claims and/or defenses
- What is the range of the amount in controversy?
- What jurisdiction is the case pending? Are there applicable ESI rules for the particular court?
- Do you have a sense of the amount of data that is likely to be involved or requested from our client / from opposition?

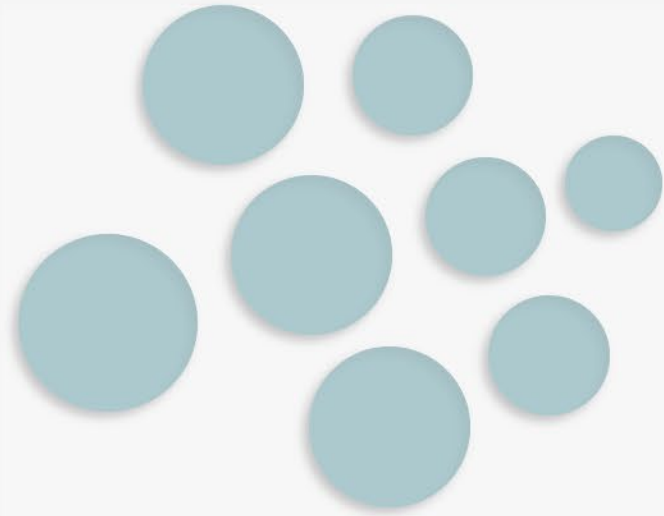


Non-Custodial Data/IT Services

- Ascertain the types of IT systems that may be potentially relevant
- Is there ESI that is not associated with any individual custodians that needs to be preserved?
 - (e.g., enterprise databases, legacy data, human resources, payroll records)
- Are there any significant IT changes, developments or occurrences that could impact preservation/collection?
 - (e.g., new systems, computer crashes, outdated systems, deleted data, foreign data, document retention policies, auto-delete)

Non-Custodial Data/IT Services (Cont'd)

- Are there data from sources that are not reasonably accessible, and therefore won't be preserved or reviewed?
- Is there a need for a forensic expert or advanced eDiscovery tools? How will the evidence be collected in a forensically sound manner? (more on that later...)
- Are there any steps that IT needs to take in order to allow for continued destruction of emails, voicemails, and other ESI not subject to the litigation hold?
- Have you considered the Rule 26(f) / meet and confer with opposing counsel to discuss the depth and breadth of preservation, collection and production specifications?



Data Mapping & Collections: Key Watchouts



Data Maps – Critically Important

- Personal Computers
- Company-Issued Mobile Devices
- Personal Mobile Devices
- Cloud Storage
- Corporate/Shared Networks
- External Storage Devices
- Social Media



Personal Computers

- Forensic tools can recover metadata unknown to the user
 - Deleted content
 - File(s) accessed and internet search history
 - Whether external storage devices were connected
- The model may dictate how the image can be created successfully



The image features four teal-colored silhouettes of hands interacting with mobile devices. In the top left, a hand holds a smartphone vertically. In the top right, a hand points at a tablet held by another hand. In the bottom left, a hand holds a smartphone vertically. In the bottom right, a hand holds a smartphone horizontally. The background is a light gradient with faint binary code (0s and 1s) visible at the bottom.

Company-Issued Mobile Devices

- Company-issued mobile devices often have a mobile device management tool (“MDM”) installed
 - Restricts backups/collections without the help of IT
 - MDM policy may need to be changed
 - MDM app may need to be removed
- MDM does not help with data collection from mobile devices

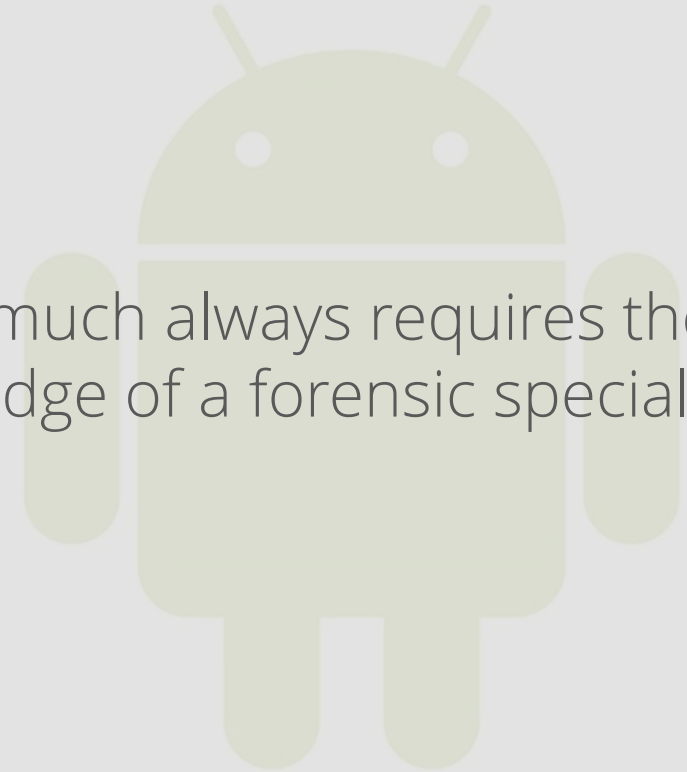
Personal Mobile Devices

iPhone

- Generally easier to collect with some remote options
- iTunes backups, even performed by the employee, may be an option

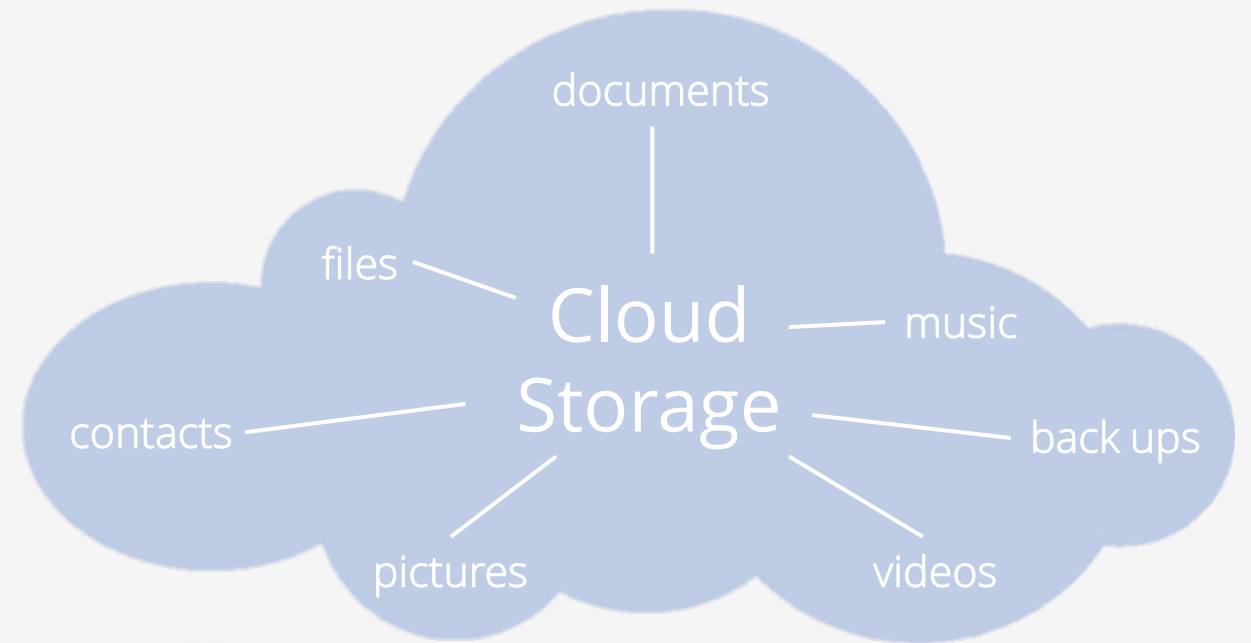
Android

- Pretty much always requires the knowledge of a forensic specialist



Cloud Storage Systems

- Cloud storage may not be company-sanctioned
- Collection steps will be dictated by the cloud storage app
- Business-class cloud storage accounts typically have additional logging available
- Extremely large volumes (hundreds of GB) of data could take weeks to collect



Corporate Network & Systems

- Often considered “systems of record”
- Data Mapping: be sure to ask your client about:
 - How their corporate networks are structured
 - Who has network access
 - Any automated deletion cycles that may apply
- M365: be wary of license limitations



USB or External Hard Drives

- Employees may be relying on external storage due to convenience or inability to connect to the company's network storage
- In a remote-imaging situation, the devices may be able to be plugged into the computer being collected (case specific – not a good idea for a defense case involving trade secrets theft)

Social Media/Messaging Apps

- Slack, Teams, Facebook, Instagram, LinkedIn, etc., are commonly used by employees for both sharing work and basic communications
- eDiscovery “purpose built “ tools do exist for most of the popular platforms
 - Onna for Slack
 - X1 Social Discovery for FB, IG, and LinkedIn
 - 4IG for Salesforce and other sources
 - Microsoft 365 security & compliance console for Teams



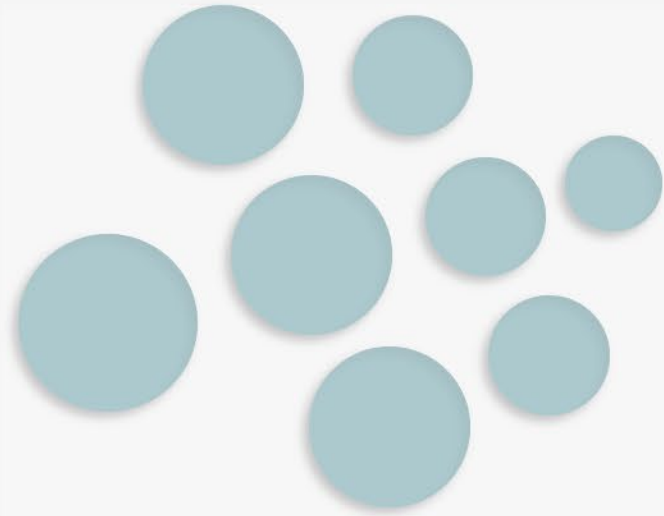
EDRM Workflow – Takeaways for Lawyers

- Help attorneys offer more proactive advice that will mitigate the risk of losing important ESI.
- Need to stay on top of the measures and tactics by which organizations create ESI, retain potentially relevant evidence, and dispose of ESI.
- Without proper forethought and planning, the client's ability to find, preserve and identify relevant evidence can be severely hampered.

EDRM Workflow Considerations



- Rule 26's proportionality standards direct attorneys to weigh what is relevant in proportion to the cost and expense in reviewing and producing that information.
- Mapping and processing can help locate then defensibly reduce a client's data set, thereby minimizing the amount of time spent on reviewing useless files.

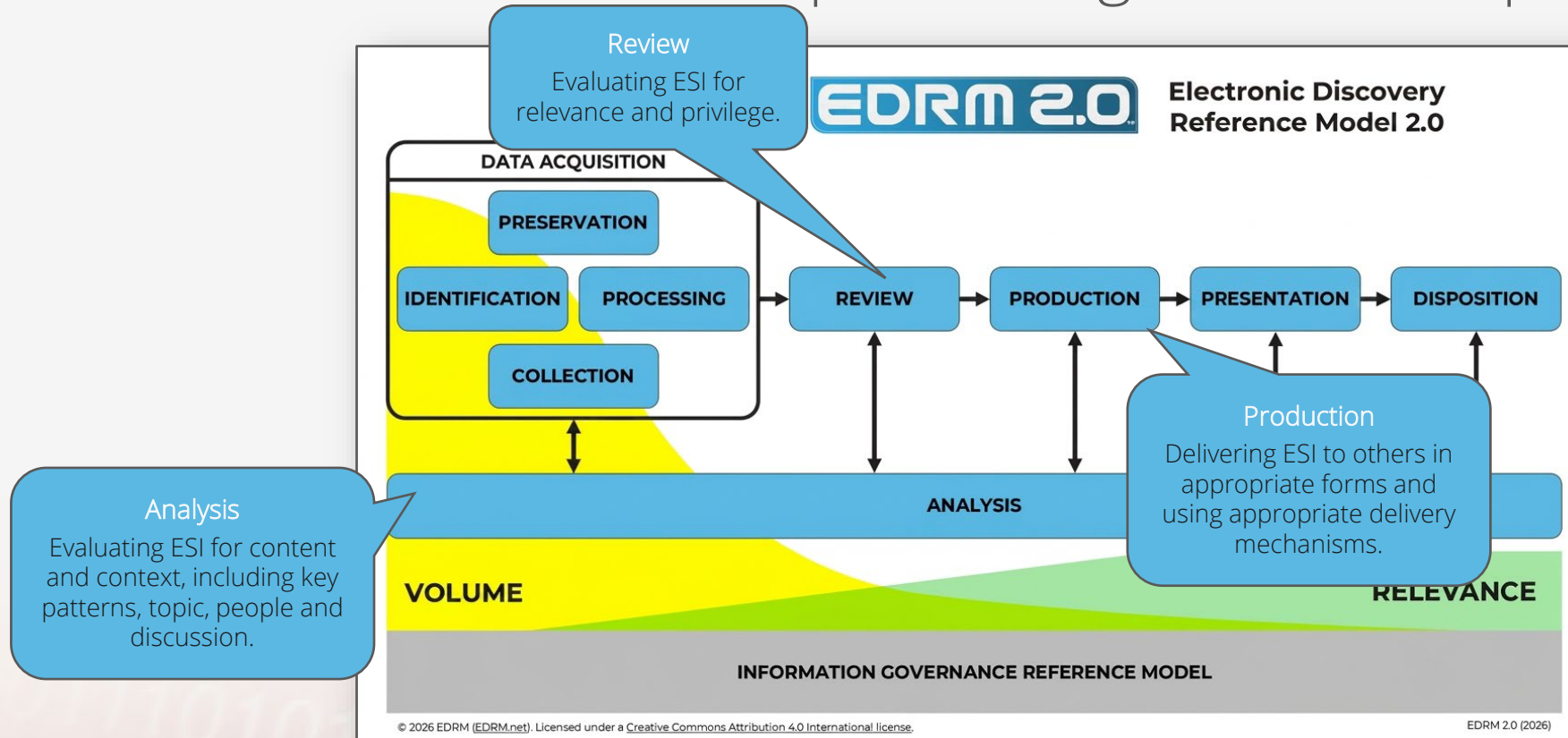


Advanced Analytics: Once You
Collect the Data, How Can
You (Efficiently) Review It?



EDRM Workflow

Electronic Discovery Reference Model ("EDRM") -- evidence identification, collection, processing, review and production



What Is Analytics?

- The process of identifying patterns in data.
- Useful in discovery to reduce data to relevant information.
- Technology assisted review saves time and money.
- Accuracy is greater than that of standard linear human review.



Conceptual vs. Structured Analytics

Conceptual



Clustering



Concept Searching



Visualization

Structured



Email threading



Name normalization



Textual near duplicate



Language detection



Automated redactions

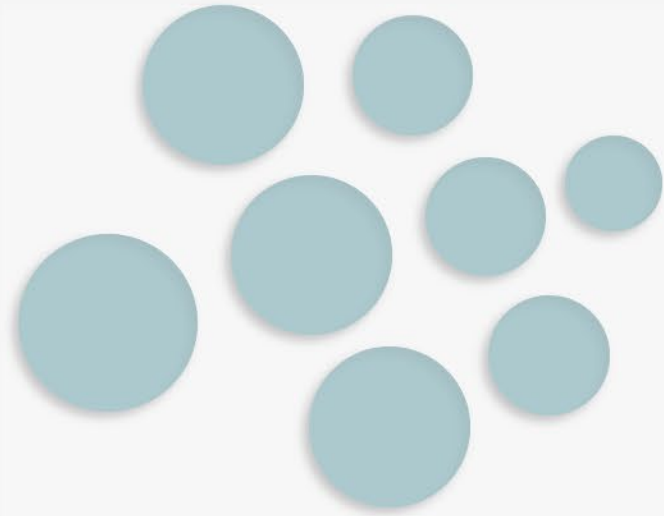


Active learning review

GenAI: The New Frontier

- Leverage LLM's (and other algorithms) designed for litigation needs
- First-pass document review
- Case mapping
- Chronology building





Use Cases: Technology Is Your Friend



Value of Technology Assisted Review

Matter: DOJ Subpoena Issued to Energy-Related Tech Company (involving overseas transactions)

Problem:

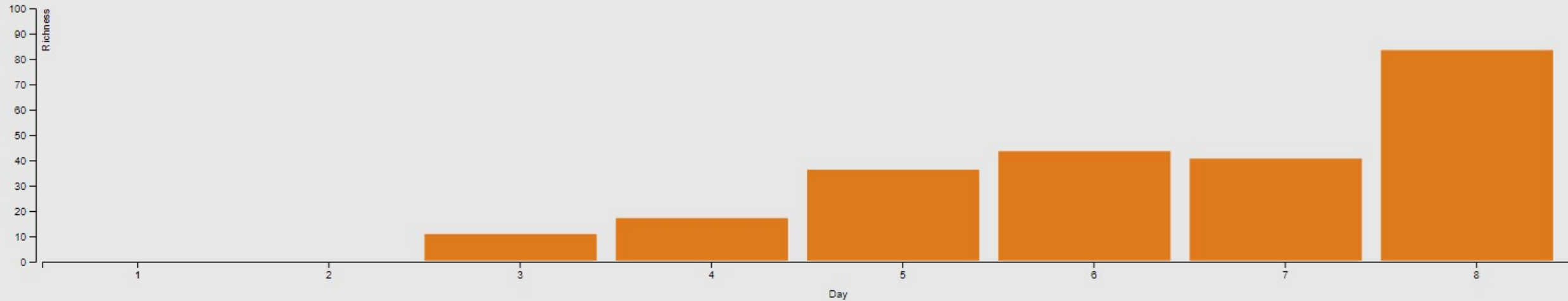
- ESI document collection of approximately 34,000 documents, resulting from key word searching.
- Only 10% of the documents were determined to be relevant and responsive (benchmarked by a random sample). Absent the use of analytics, the reviewers thus would have had to review ten documents to find one that was relevant.

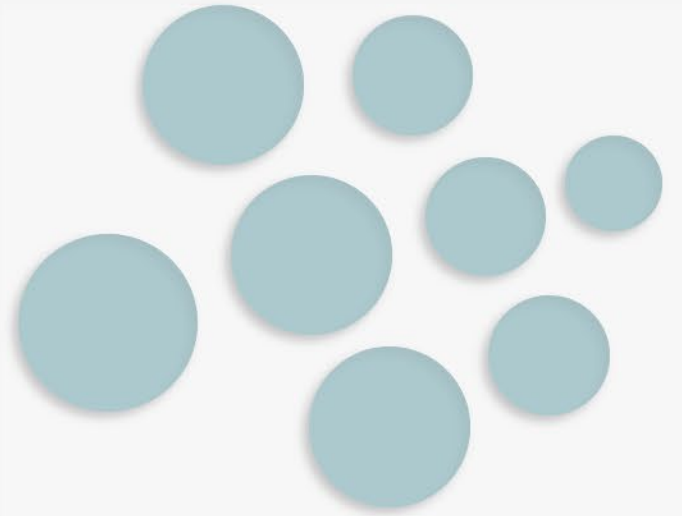
Solution:

- “Continuous Active Learning” analytics noted the attorney reviewers’ relevance decisions and then continuously identified more and more relevant documents.
- After reviewing only 550 documents, the percentage of relevant documents presented to the reviewers increased from 10.9% to 43.6%, and then to 83.5% after reviewing only 2,144 documents. (That’s less than 1 banker’s box, in old-school terms.)

Value of Technology Assisted Review

Day	1	2	3	4	5	6	7	8
Reviewed	0	0	64	209	295	808	307	461
Relevant	0	0	7	36	107	352	125	385
Richness (%)	0%	0%	10.9%	17.2%	36.3%	43.6%	40.7%	83.5%





Smartphone Forensics



Key Data Pulled from Smartphones

- Text Messages (iMessage, SMS, MMS)
- Notes
- Videos
- Pictures
- Some application activity (more on that later)
- Browser searches

Advanced Extraction Options

Encrypted
Message
Apps

Deleted
Content

Unlocking a
Device

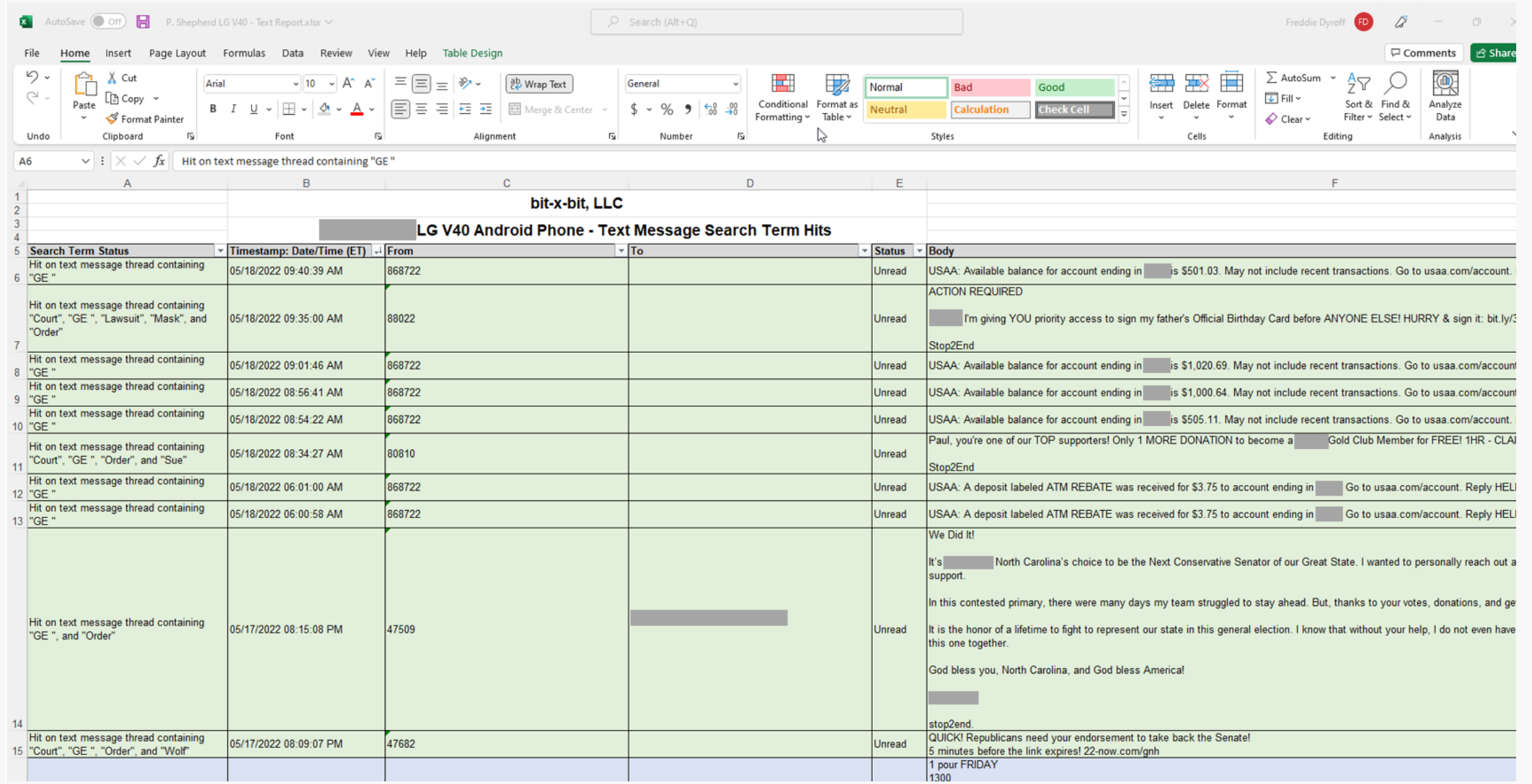
Common Deliverables

EXCEL REPORT - TEXT MESSAGES

UFDR REPORT

RELATIVITY EXPORT

Excel Report - Text Messages



bit-x-bit, LLC					
LG V40 Android Phone - Text Message Search Term Hits					
Search Term Status	Timestamp: Date/Time (ET)	From	To	Status	Body
Hit on text message thread containing "GE "	05/18/2022 09:40:39 AM	868722		Unread	USAA: Available balance for account ending in [REDACTED] is \$501.03. May not include recent transactions. Go to usaa.com/account.
Hit on text message thread containing "Court", "GE ", "Lawsuit", "Mask", and "Order"	05/18/2022 09:35:00 AM	88022		Unread	[REDACTED] I'm giving YOU priority access to sign my father's Official Birthday Card before ANYONE ELSE! HURRY & sign it: bit.ly/3[REDACTED] Stop2End
Hit on text message thread containing "GE "	05/18/2022 09:01:46 AM	868722		Unread	USAA: Available balance for account ending in [REDACTED] is \$1,020.69. May not include recent transactions. Go to usaa.com/account.
Hit on text message thread containing "GE "	05/18/2022 08:56:41 AM	868722		Unread	USAA: Available balance for account ending in [REDACTED] is \$1,000.64. May not include recent transactions. Go to usaa.com/account.
Hit on text message thread containing "GE "	05/18/2022 08:54:22 AM	868722		Unread	USAA: Available balance for account ending in [REDACTED] is \$505.11. May not include recent transactions. Go to usaa.com/account.
Hit on text message thread containing "Court", "GE ", "Order", and "Sue"	05/18/2022 08:34:27 AM	80810		Unread	Paul, you're one of our TOP supporters! Only 1 MORE DONATION to become a [REDACTED] Gold Club Member for FREE! 1HR - CLA[REDACTED] Stop2End
Hit on text message thread containing "GE "	05/18/2022 06:01:00 AM	868722		Unread	USAA: A deposit labeled ATM REBATE was received for \$3.75 to account ending in [REDACTED] Go to usaa.com/account. Reply HEL[REDACTED]
Hit on text message thread containing "GE "	05/18/2022 06:00:58 AM	868722		Unread	USAA: A deposit labeled ATM REBATE was received for \$3.75 to account ending in [REDACTED] Go to usaa.com/account. Reply HEL[REDACTED]
Hit on text message thread containing "GE ", and "Order"	05/17/2022 08:15:08 PM	47509	[REDACTED]	Unread	We Did It! It's [REDACTED] North Carolina's choice to be the Next Conservative Senator of our Great State. I wanted to personally reach out a support. In this contested primary, there were many days my team struggled to stay ahead. But, thanks to your votes, donations, and ge It is the honor of a lifetime to fight to represent our state in this general election. I know that without your help, I do not even have this one together. God bless you, North Carolina, and God bless Americal [REDACTED] stop2end.
Hit on text message thread containing "Court", "GE ", "Order", and "Wolf"	05/17/2022 08:09:07 PM	47682		Unread	QUICK! Republicans need your endorsement to take back the Senate! 5 minutes before the link expires! 22-now.com/gnh 1 pour FRIDAY 1300

Extraction Summary Page – UFDR Report

Cellebrite Reader 7.55.2.2

File View Tools Report Help

Search Advanced

Home Timeline Analyzed Data File Systems Insights Tags Reports

Apple iPhone XR (A1984)_2022-08-...

Extraction Summary (1) Instant Messages (146) Chat (Native Messages) (60)

All Content Advanced Logical

Extraction Summary

+ Add extraction + Add external file Project settings Generate report

Extractions: 1



Advanced Logical

Apple iPhone XR (A1984)

Advanced Logical

Extraction start date/time
5/6/2022 12:42:00 PM(UTC-4)

Extraction end date/time
5/6/2022 1:11:52 PM(UTC-4)

Image Hashes

Hash data is available for this extraction.

Verify image hash

Case Information

Examiner name KP

Malware scanner

Malware scan performed No

Content

Contacts	46	Cookies	19	Installed Applications	4
Instant Messages	146	Log Entries	49	Notes	8 (1)
Passwords	20	Searched Items	57	Social Media	21
User Accounts	10	Voicemails	2	Web Bookmarks	9
Web History	167				

Data Files

Audio	2	Configurations	11	Databases	1
Documents	1	Images	820	Uncategorized	6

42

42

Relativity

Documents

NativeImageOCR TextSearch Term HitsPDF

100%

Search within Document

Derek <[redacted]> Sgt. [6]Undefined Participant [1]

7 messages on Nov 7, 2019

Thursday, November 7, 2019

Derek <[redacted]> Derek <[redacted]>

Derek <[redacted]> ?

Just wanted to let u know that my couch even broke more! I need a new one

2:53 PM

Derek <[redacted]> ?

I need the battery out of the truck

3:59 PM

Undefined Participant ?

[redacted]

6:02 PM

Derek <[redacted]> ?

Mike is taking me to dad's tomorrow

6:49 PM

Derek <[redacted]> ?

Call me when u get a chance

7:20 PM

Derek <[redacted]> ?

When will u be home?

8:12 PM

Derek <[redacted]> ?

Call me when u can

8:46 PM

Timeline

2:53 PM3:30 PM4:00 PM4:30 PM5:00 PM5:30 PM6:00 PM6:30 PM7:00 PM7:30 PM8:00 PM8:30 PM

Nov 7

View Similar Documents

Coding Layout

Save & NextSaveCopyCancelReview Co...

> Document Details

< Review Coding

Review Determination

☐ Responsive

☐ Not Responsive

☐ Further Review Needed

☐ Tech Issue

Manage

Privilege Determination

☐ Privileged

☐ Privilege Redacted

☐ Not Privileged

☐ Further Review Needed

Manage

Privilege Type

☐ Attorney-Client

☐ Work Product

Manage

Non-Priv Redaction Reason

☐ Personally Identifiable Information (PII)

☐ Protected Health Information (PHI)

☐ Not Responsive

Manage

Confidential Designation

☐ CONFIDENTIAL

☐ HIGHLY CONFIDENTIAL

☐ ATTORNEYS' EYES ONLY

Manage

Review Issues

☐ Hot Document

Manage

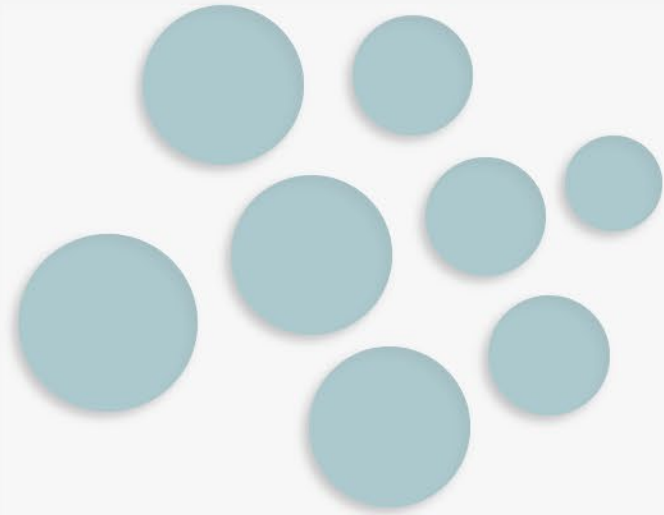
Review Comments

FamilyDocument History

What's Often NOT Available?

Full eMail
Conversations

Third Party App
Content That Is
Stored In Cloud
But Accessed via
Phone (e.g.
DropBox)



What Do Judges Think About Analytics Technology?



Judicial Acceptance: Advanced Analytics

- First blessed by a court in 2012
 - *Da Silva Moore v. Publicis Group*, 287 F.R.D. 182 (S.D.N.Y. 2012)
 - Sex discrimination case against large advertising firm
 - Defendant sought to use AI to reduce massive ESI volumes for review, parties had dispute over methods
 - “Statistics clearly show that computerized searches are at least as accurate, if not more so, than manual review.” (*Id.* at 190)
 - “While . . . computer-assisted review is not perfect, the [FRCP] do not require perfection.” (*Id.* at 191)

Judicial Acceptance: Advanced Analytics

- *Da Silva Moore's Progeny*
 - *Global Aerospace Inc. v. Landow Aviation, L.P.*, 2012 WL 1431215, No. CL 61040 (Va. Cir. Ct. Apr. 23, 2012)
 - 250 GB of ESI to be reviewed in commercial litigation
 - Defendants permitted to use predictive coding over plaintiffs' objections
 - Observed that analytics "is capable of locating upwards of seventy-five percent of the potentially relevant documents . . . at a fraction of the cost and in a fraction of the time of linear review." (*Id.* at *1)

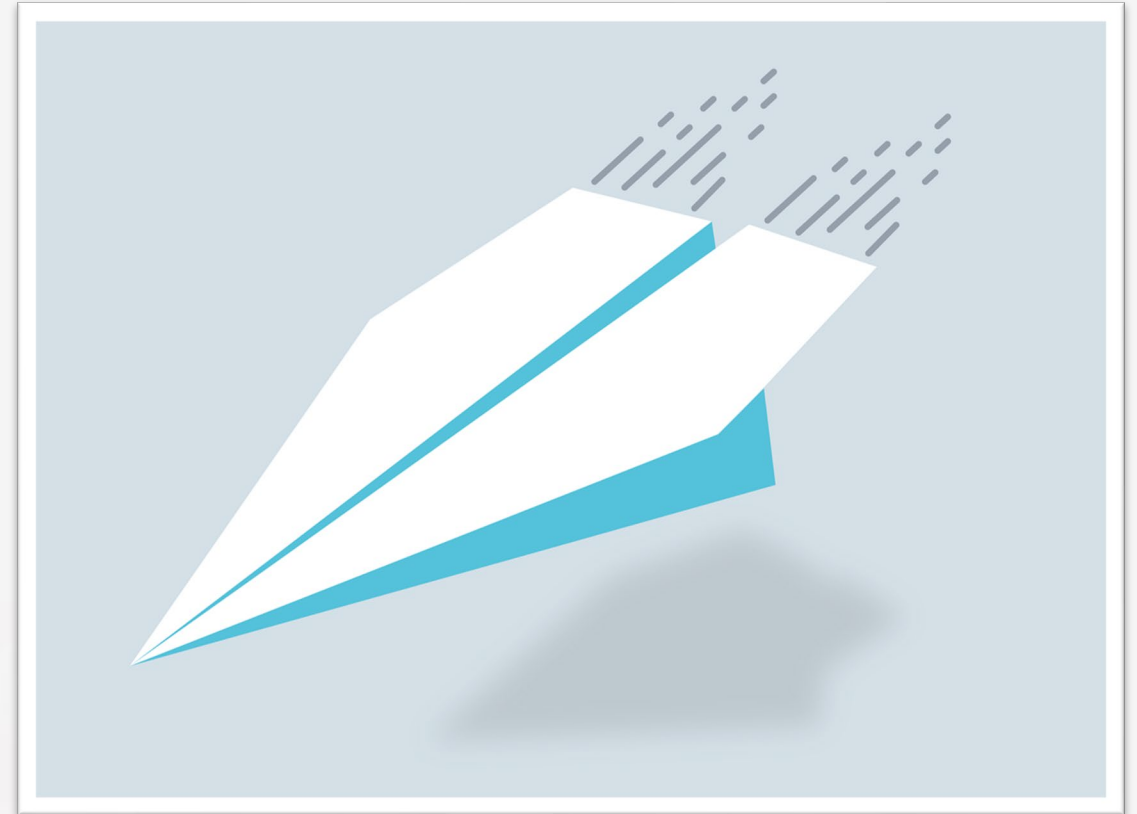
Judicial Acceptance: Advanced Analytics

- *Da Silva Moore's Progeny*
 - *Federal Housing Finance Agency v. HSBC North America Holdings, Inc.*, 2014 WL 584300 (S.D.N.Y. Feb. 14, 2014)
 - Court denied a request for reconsider of a discovery order permitting the use of analytics
 - Defendants permitted to use predictive coding over plaintiffs' objections
 - "The literature that the Court reviewed . . . Indicated that predictive coding had a better track record in the production of responsive documents than human review[.]" (*Id.* at *3)
 - "[N]o one could or should expect perfection from the discovery process. All that can be legitimately expected is a good faith . . . commitment to produce . . . responsive documents." (*Id.* at *2)

New Huntsman v. SW Airlines Co.,

No. 19-cv-00083-PJH, 2021 BL 301052, 2021 US DistLexis 150170
(N.D. Cal. Aug. 10, 2021)

- “Southwest's approach to using keyword searches and technology-assisted review in tandem does not offend the court's expectation that the parties conduct a reasonable inquiry as required by the rules.”



In re Diisocyanates Antitrust Litig., 2021 WL 4295729 (W.D. Pa. Aug. 23, 2021)

- Plaintiffs filed a motion to require Defendants to use certain search terms and TAR methodologies to identify responsive documents. Defendants cross-moved for a 26(c) protective order to allow them to use their own search terms and TAR methodology
- Special Master: parties should continue to meet and confer on the areas of dispute using the provided guidance as a roadmap
 - “Transparency transcends cooperation. It does not mean merely that parties must discuss issues concerning the discovery of ESI; it requires that they disclose information sufficient to make those discussions, as well as any court review, meaningful.”

Judicial Acceptance: LLM's for Discovery Material Review

- Rudasill v. Swiss Re American Holding Corp., No. 1:25-CV-01403 (S.D.N.Y. May 13, 2026)
 - *Parties entered into a protective order directly addressing the use of LLMs/AI platforms to handle discovery material*
 - The P.O. did not impose a blanket prohibition
 - Receiving party must obtain agreement before loading the adversary's discovery materials to an AI platform/LLM
 - Certain security and information governance requirements must be met (e.g., no use of production data to train the AI model; closed/secure environment)

Judicial Exposure of AI: Litigation Prep

- U.S. v. Heppner, 1:25:cr-00503 (S.D.N.Y. Feb. 17, 2026)
 - *In a criminal matter, court found that written exchanges between the defendant and Claude were not protected by privilege or work product doctrines*
 - Protection did not attach
 - In this matter, the documents were not created at counsel's direction – the defendant used Claude, in anticipation of an indictment, to outline legal strategy, then shared that information with counsel
 - Data in Claude is used to train the AI, hence no confidentiality applied
 - Claude is not an attorney and cannot provide legal advice, even if the prompts called for such guidance

Judicial Protection of AI: Litigation Prep

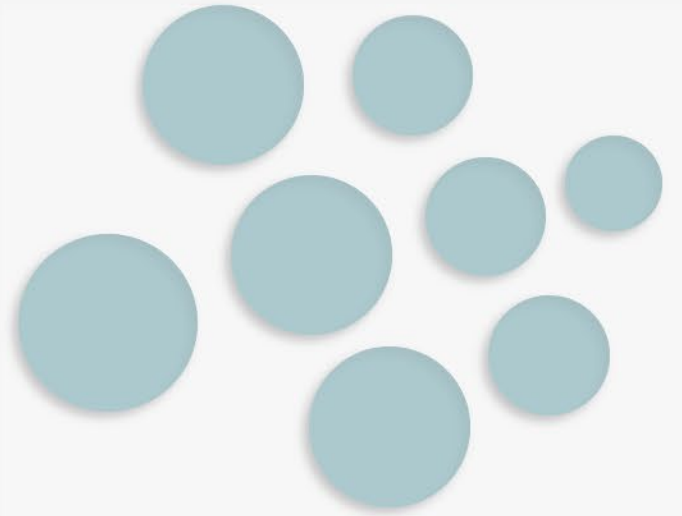
- Warner v. Gilbarco, 2026 WL 373043 (E.D. Mich. Feb. 10, 2026)
 - *Defendants sought all “documents/information” about plaintiff’s use of Chat GPT/AI for litigation-preparation efforts*
 - Court denied the request, characterizing it as a fishing expedition aimed at counsel’s mental impressions
 - Court found that work product protection applied, rejected waiver due to merely using an AI tool
 - Court found that waiver typically requires disclosure to an adversary, or via a method likely to reach an adversary

Key AI Takeaways: Guidance from Early Decisions

- AI prompts/outputs likely to be treated as “ordinary” ESI – discoverability turns on relevance and proportionality (no “magic answer” for AI)
- Courts will likely deny broad “AI use” requests, as fishing expeditions
- Courts may, however, compel AI log production where it goes to the merits (with protective orders in place)
- AI prompts for litigation preparation can be protected as work product, but waiver/non-privilege finding is possible if attorneys are not involved

Key AI Takeaways: Guidance from Early Decisions

- Consider disclosing usage up front, at the Rule 26(f) (or analogous) conference – be sure to address the tools and how privilege will be addressed
- Ensure counsel is involved – contemporaneously document the direction to use the technology
- Adopt written AI use protocols (include which tools are approved, identify the required privacy settings, mandate attorney involvement)



Questions and Feedback



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THE INTELLIGENCE. **WE GET IT.** SM



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