

Civility: Communicating during Conflict

Kait Flocchini, Assistant Bar Counsel
State Bar of Nevada





How the project
was briefed



How the team
understood it



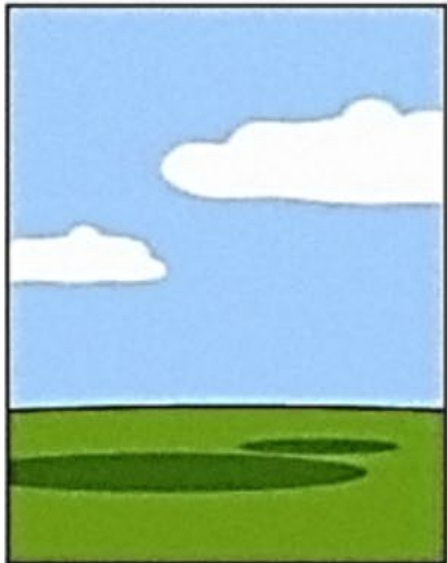
How it was
designed



How the project
was executed



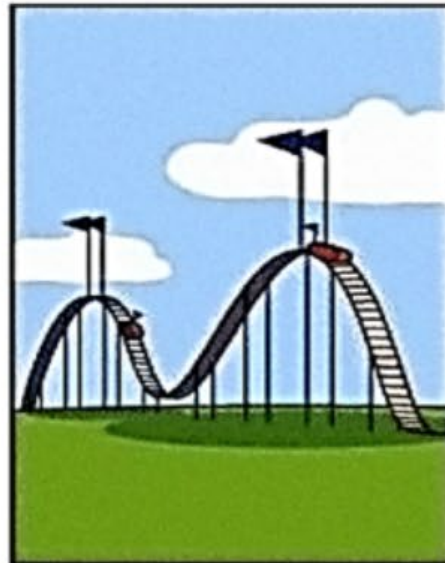
How the consultant
described it



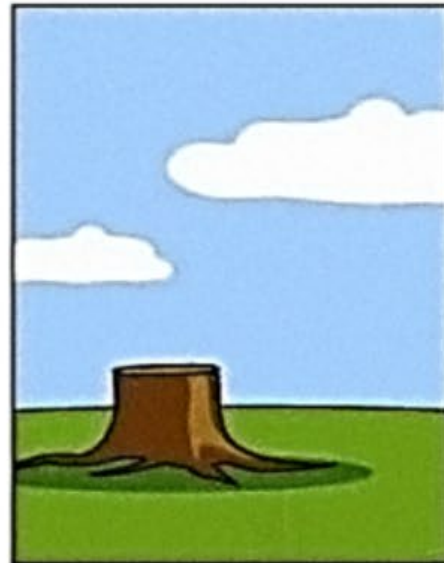
How it was
documented



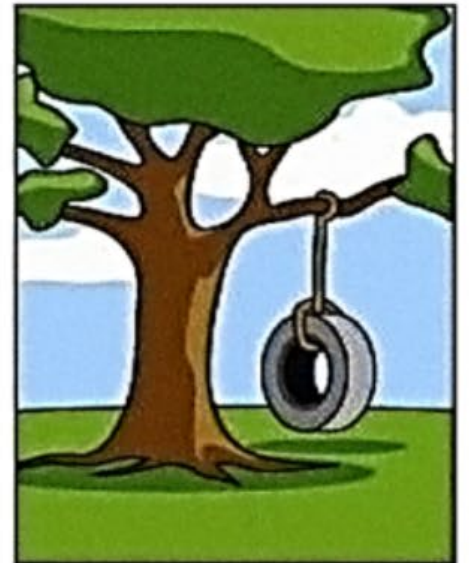
What was in
the market



How the client
was billed



How it was
supported



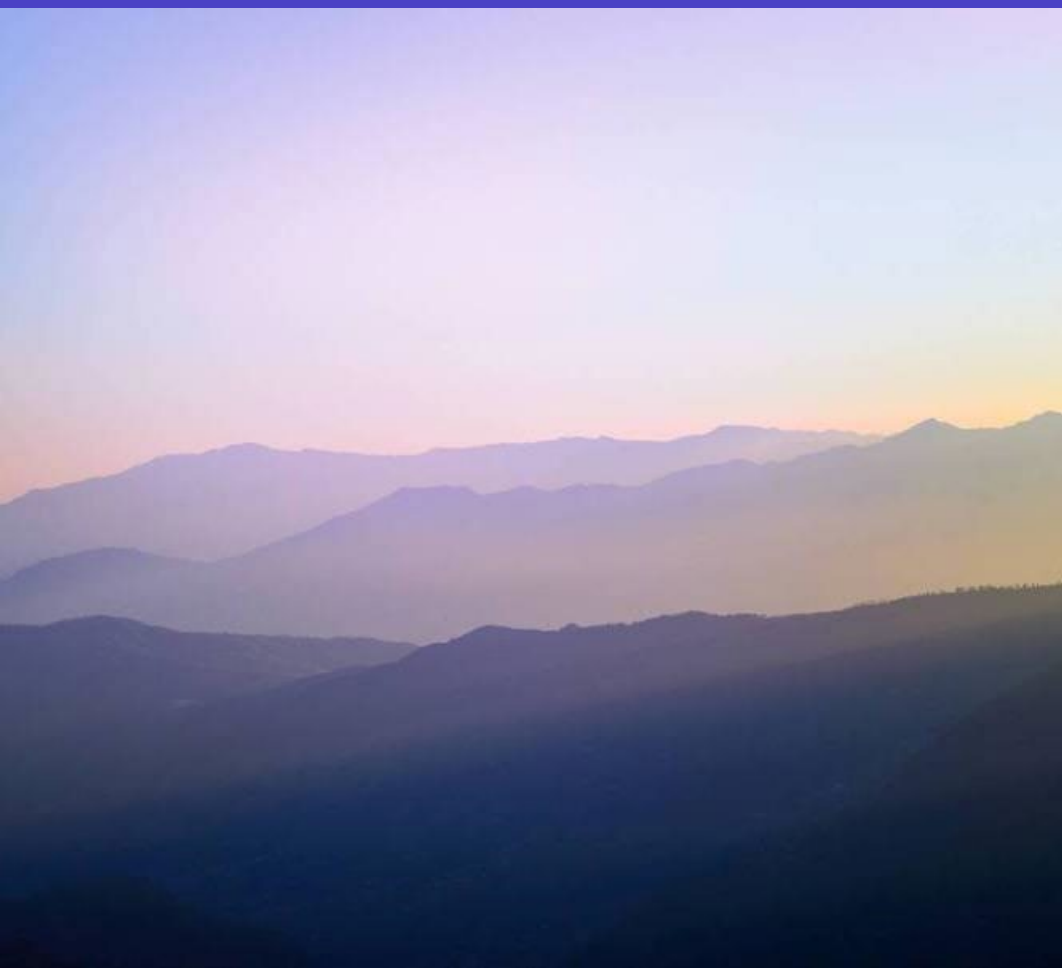
What the client
really needed

Introduction



- Prepare yourself
- Understand others

Prepare Yourself: Your Conflict



A recent conflict I had was with [name] about [topic]. I was frustrated because they couldn't see that [my position].

An Issue with Jack

Meet Jack. He is a partner at Grabbit & Runne, a boutique firm in Reno. You are a junior associate for G&R.

Jack has a reputation for being hard nosed and direct. He considers himself tough but fair.



An Issue with Jack

Jack isn't happy with you. He asked for your help on a project, and you haven't been able to dedicate the time to it that he hoped due to your own work commitments. It's a big case for the firm and he prides himself on his success rate.

When asked you to help, he suggested a few hours of work. It's been weeks now and there's no end in sight.

Last night he sent you an email...



From: Jack

To: Me

Good evening,

We need to talk first thing tomorrow about the ACME case. To be honest, I'm not happy about the level of commitment you are showing to me, the client, and the firm.

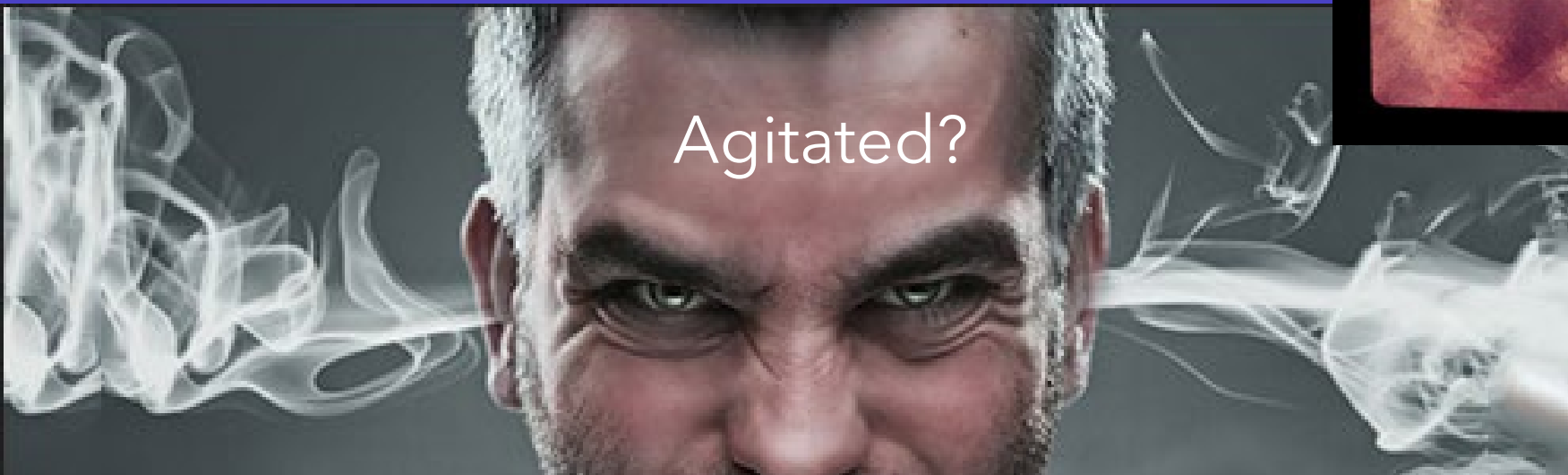
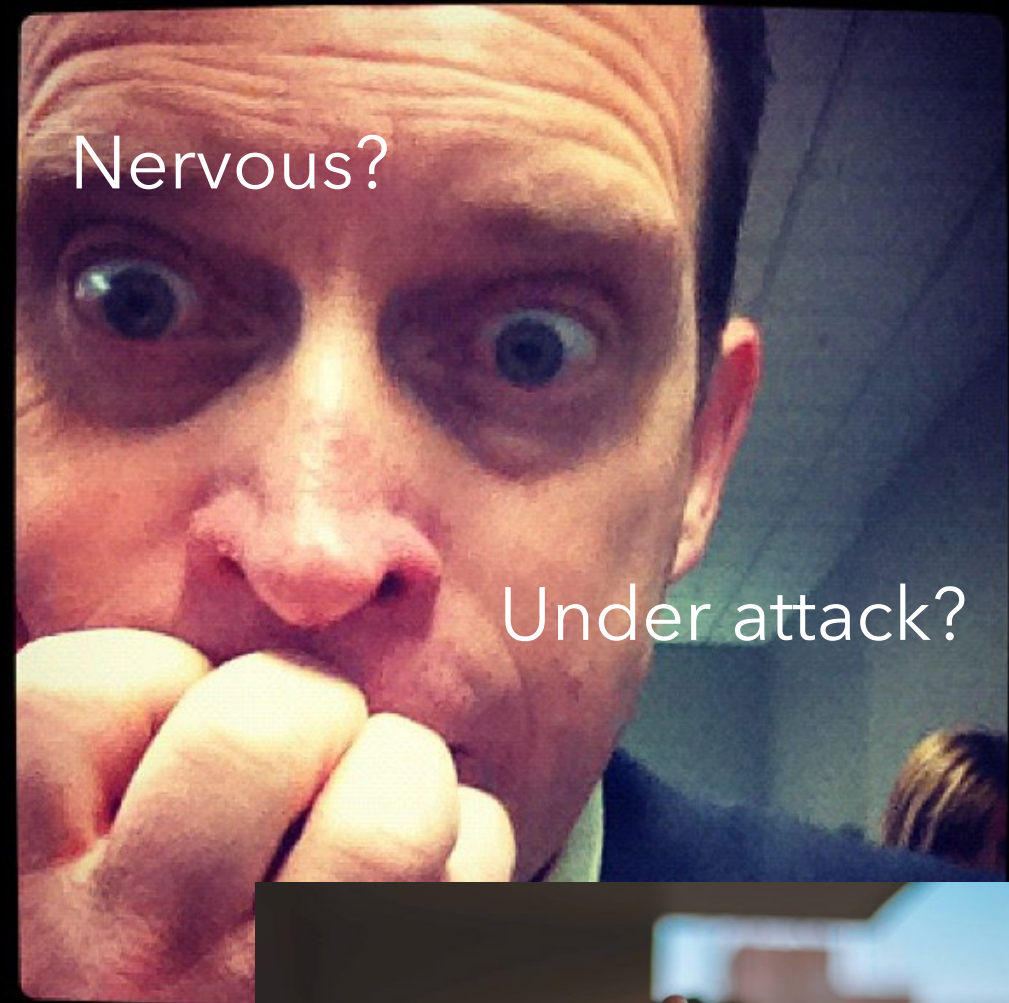
Let me know when you are in tomorrow morning, I will come to you.

Jack

Prepare Yourself

Your reaction

How would your emotional state be
Have you ever been in a similar situation?
the next morning?



Prepare Yourself

Your reaction

Low Stakes vs High Stakes



Updated with New Approaches for Today's Communication Challenges

OVER 5 MILLION COPIES SOLD

crucial conversations

THIRD EDITION



**TOOLS FOR TALKING WHEN
STAKES ARE HIGH**

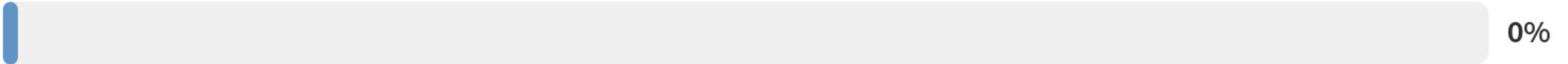
JOSEPH GRENNY • KERRY PATTERSON • RON McMILLAN
AL SWITZLER • EMILY GREGORY

Prepare Yourself: Crucial Conversations

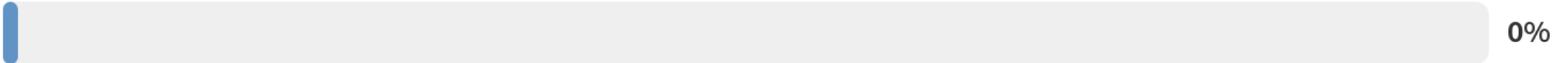


Think back to the conflict you noted earlier in the presentation. In hindsight, was it destined to be a stressful or "crucial conversation?"

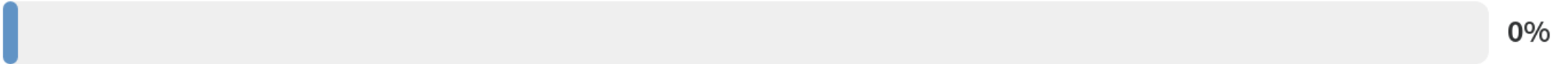
Yes.



No.



No, but I could have prepared for it better.



Remember Jack?

Jack isn't happy with you. He asked for your help on a project, and you haven't been able to dedicate the time to it that he hoped due to your own work commitments. It's a big case for the firm and he prides himself on his success rate.

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Prepare Yourself: Crucial Conversations

Ask Yourself:

- What is my goal?
- Can we identify a mutual purpose or shared goal?
- How will I avoid becoming defensive or reactive?

An Issue with Jack

If I don't get this contract done, we're going to lose ACME as a client



ACME isn't important right now. XYZ Corp pays our bills. Why can't you see that?



#1 BESTSELLER

DANIEL GOLEMAN

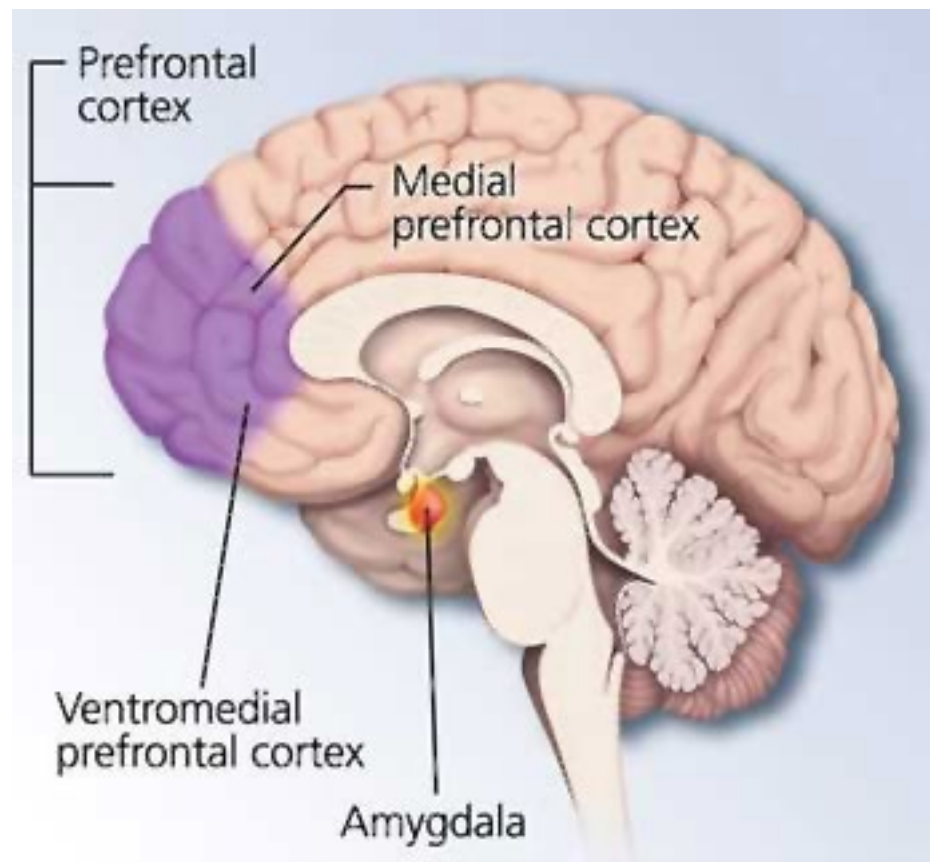
The groundbreaking book that
redefines what it means
to be smart

Emotional Intelligence

*Why It Can Matter
More Than IQ*

WITH A NEW INTRODUCTION BY THE AUTHOR

Prepare Yourself: Systems 1 and 2



A
M H
Y I
G J
D A
A C
L K
A

THE NEW YORK TIMES BESTSELLER

THINKING, FAST AND SLOW



DANIEL

KAHNEMAN

WINNER OF THE NOBEL PRIZE IN ECONOMICS

“[A] masterpiece . . . This is one of the greatest and most engaging collections of insights into the human mind I have read.” —WILLIAM EASTERLY, *Financial Times*

Prepare Yourself: Systems 1 and 2

- **System 1 is automatic and impulsive.**
- **It enables you to make quick decisions with heuristics or mental shortcuts.**
- **But those shortcuts result in cognitive biases**
- **System 1 is a remnant from our past, and it's crucial to our survival. We don't have to think before jumping away from danger.**

THE NEW YORK TIMES BESTSELLER

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Prepare Yourself: Systems 1 and 2

- **System 2 is very conscious, aware and considerate.**
- **It exerts self-control and focus.**
- **Think about that brain teaser on the LSAT.**
- **System 2 is one of the most 'recent' additions to our brain and only a few thousand years old. We shifted from worrying about food and shelter to earning money, supporting a family, and complex decisions.**
- **However, these 2 systems often fight over who's in charge and this conflict affects how you respond to others.**

THE NEW YORK TIMES BESTSELLER

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Prepare Yourself: Systems 1 and 2

- **Your brain is lazy.**
- **It defaults to system 1 to conserve energy.**
- **But you make intellectual errors in system 1.**
- **When system 1 can't solve a difficult problem, it calls system 2 into action.**

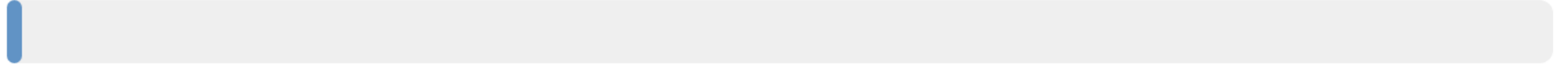




What is 47×13 ?

0%

About 500



0%

About 600



0%

About 700

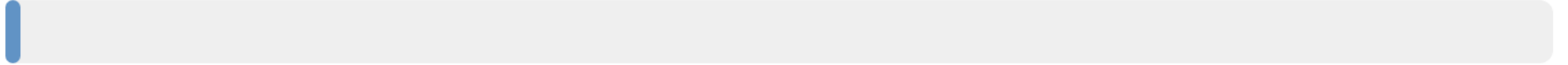




What is 32×12 ?

0%

334



0%

384



0%

436

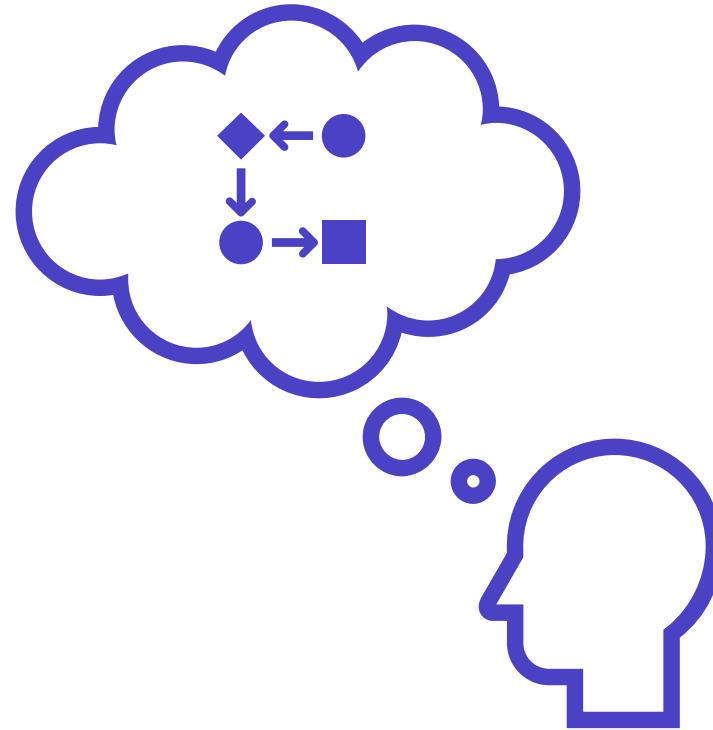


Prepare Yourself: Systems 1 and 2

System 1



System 2

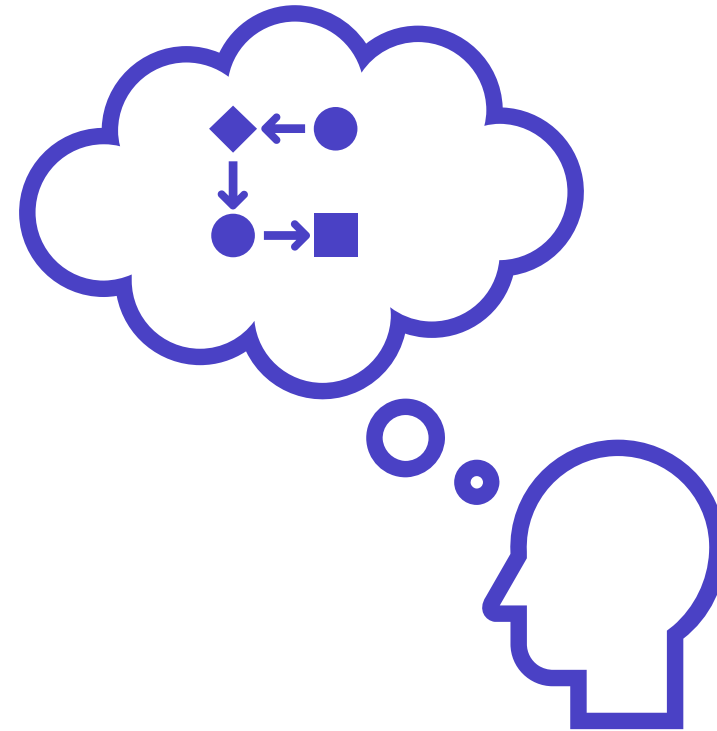


Think back to your conflict. Did you use:

System 1

or

System 2



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The groundbreaking book that
redefines what it means
to be smart

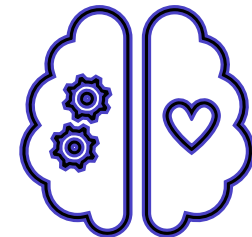
Emotional Intelligence

*Why It Can Matter
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WITH A NEW INTRODUCTION BY THE AUTHOR

Prepare Yourself: Amygdala Hijack

- Accommodate
- Attack
- Avoid



#1 BESTSELLER

DANIEL GOLEMAN

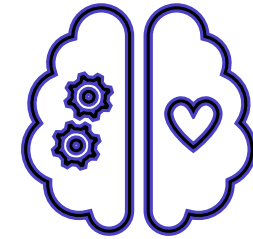
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Prepare Yourself: Amygdala Hijack



- Breathe
- Focus on you body
- Say a mantra
- Label how you feel
- Take a break

An Issue with Jack

If I don't get this contract done, we're going to lose ACME as a client



ACME isn't important right now. XYZ Corp pays our bills. Why can't you see that?

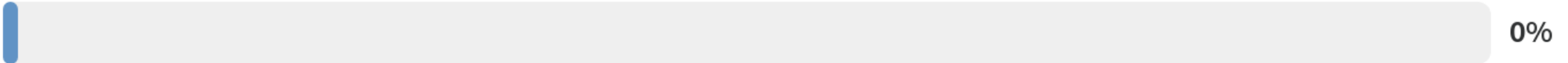


What is your default system 1 response in a professional setting?

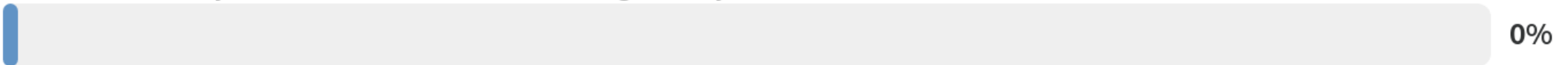
Accommodate: Apologize and work longer hours.



Attack: Accuse him of a bait and switch ploy in the amount of work.



Avoid: Tell him you have back-to-back meetings today and can't meet.



Prepare: Your default response

- Recognize and label your reaction
- Was your reaction justified?
- Is compromise or collaboration an option?

Position vs Interests

Prepare

An iceberg floating in the ocean, with a small tip above the water and a much larger, jagged mass submerged below. The background is a clear blue sky with some clouds.

Position

Your stance on a topic

I need two weeks to finish this contract.

Interests

Your underlying desired outcome or reasons for the stance

I want to my work to be accurate to mitigate risk.

A large iceberg floats in a blue ocean under a blue sky with white clouds. The visible tip of the iceberg is small and jagged, while the submerged part is much larger and more complex in shape, illustrating the concept of hidden interests.

Position

Your stance on a topic

Interests

Your underlying desired outcome or reasons for the stance

- **Consider your conflict:**
- What were your interests?
- Could you have expressed your position better?
- Was there a mutual interest?

Remember Jack?

Before meeting Jack, take a moment to identify mutual interests.

- Promotions at the firm are relationship driven. You and Jack both want a strong relationship.
- Conflict will mark both of your reputations.
- This case is difficult, but also prestigious. A successful result would benefit you both.



Prepare: Understand Others



That's not how we
do it around here.

This is due
today!

My team is swamped.
We cannot take on more.

This needs to be
reviewed and approved.

A photograph of a glowing yellow tent pitched on a rocky mountain peak at night. The tent is illuminated from within, casting a warm light. The background features rugged, snow-dusted mountain ranges under a dark blue sky with a full moon and scattered stars. The overall mood is serene and contemplative.

The art of conversation lies in listening.

Malcolm Forbes

Listening Self Reflective Quiz

	Frequently	Occasionally	Rarely
I have a hard time letting others explain fully without interrupting.	3	2	1
I often think people could “get to the point” much faster.	3	2	1
I finish sentences for other people.	3	2	1
I continue the task at hand and do not turn my full attention to the other person when they approach me and start talking.	3	2	1
I am caught not knowing what to say because I wasn’t paying attention.	3	2	1
I anticipate what others will say and jump ahead of them in conversation.	3	2	1

How are you at listening?



**Ignorer/Pretend
Listener**
0 to 6



Selective Listener
7 to 12



Attentive Listener
13 to 17



Active Listener
18

Understanding Others: Listening Skills

Body Language

- Lower your voice.
- Incline toward the speaker, but respect personal space.
- Square up.
- Establish eye contact.

Ask Questions

- Open-ended questions like "Tell me more about that ..."
- Ask why a stance is important.
- Ask for additional information. What do they know that you don't?

Paraphrase

- Express your understanding
- "Let me see if I understand correctly..."
- "Do you mean ..."
- "Are you saying ..."

Understanding Others: Listening Skills

Recognize Feelings

- Validate their feelings.
- "I understand why you are frustrated."
- "If I were in your shoes, I would feel the same way."

Summarize

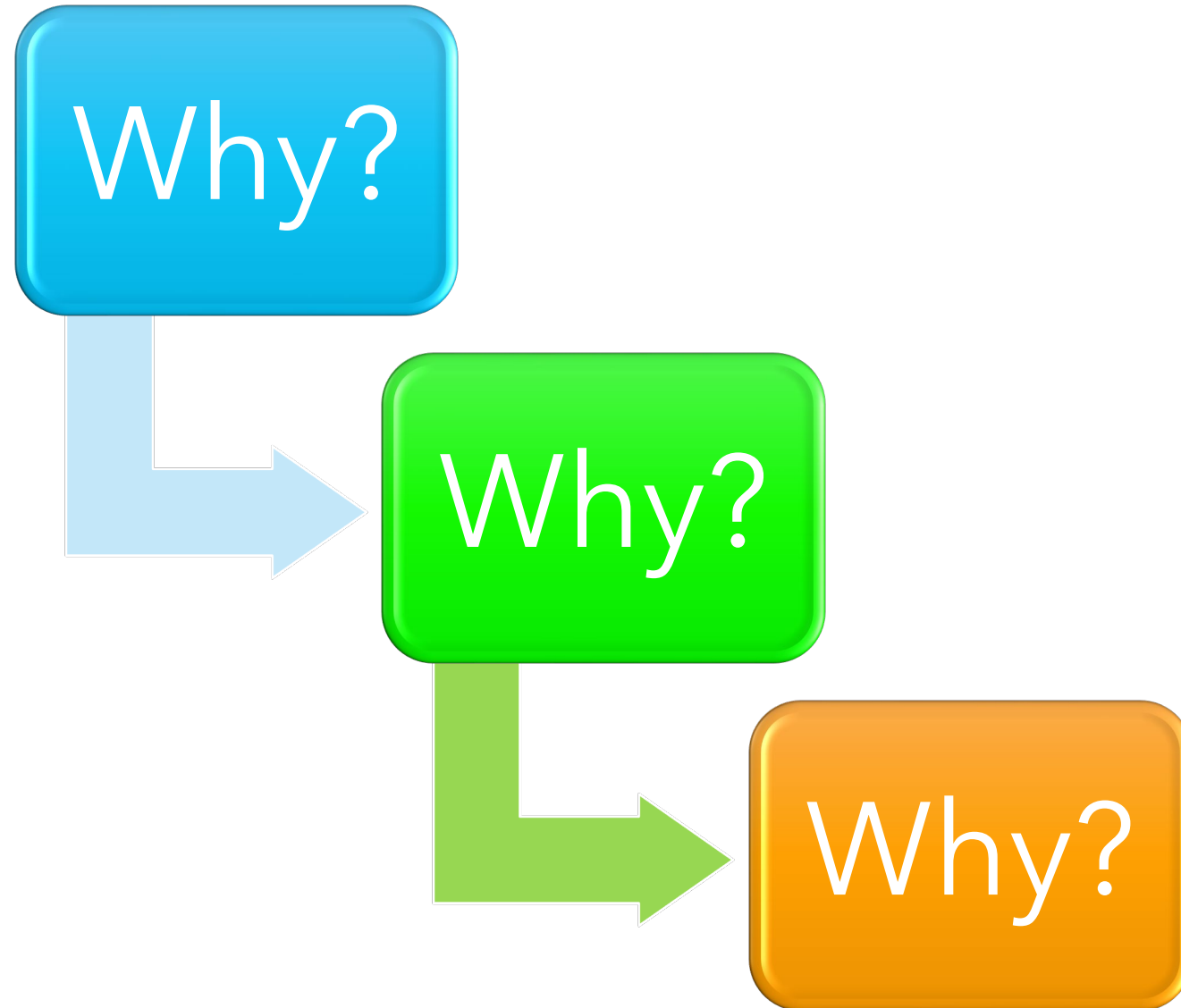
- Make sure you and the speaker have a mutual understanding.
- "I now understand your concerns. I agree that raising the issue with the judge would be the best way to proceed."
- "In summary, we all agree that ..."

Understanding Others: Listening Skills

Consider your conflict. Did you ...

- Demonstrate interest and sincerity with attentive body language?
- Inquire about the speaker's perspective?
- Paraphrase the speaker's words?
- Validate the speaker's feelings?
- Summarize and restate the main themes of the conversation?

Understanding Others: The 3 Whys



Understanding Others: The 3 Whys

Hi Gina. I'm frustrated with
I wonder if they aren't thinking
that far ahead. I'm going to sit
down with them and go
through the numbers.



Okay. Why haven't they done
the math and realized that
themselves?





**Wisdom is the reward you
get for a lifetime of
listening when you would
rather have talked.**

- Aristotle

Understanding Others: Practice with Jack

Be intentional in how you recognize and manage potentially difficult conversations.



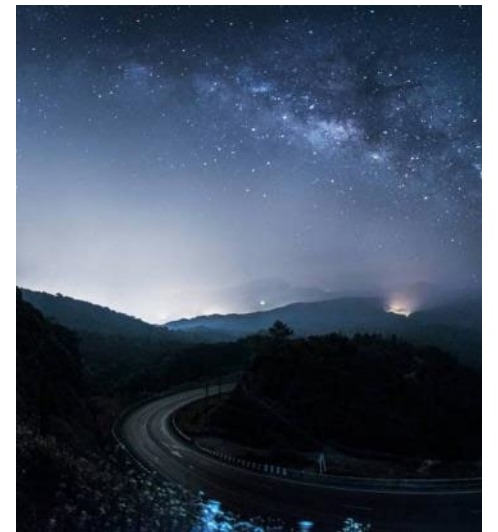
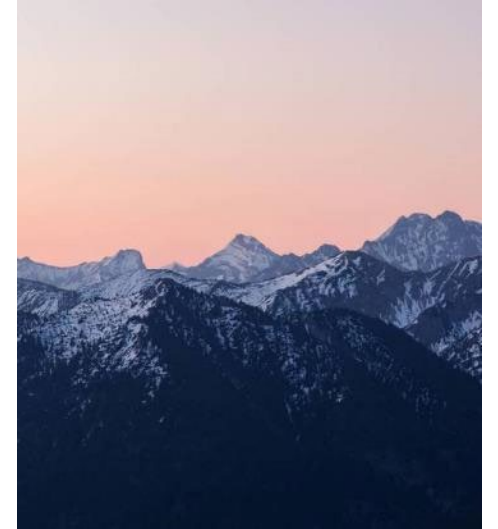
Summary

Prepare

- Identify crucial conversations early
- Recognize your system 1 default
- Identify your interests, not position

Understand

- Uncover the other side's interests
- Use listening skills
- Use the 3 whys to uncover more





Kait Flocchini

kaitf@nvbar.org



Thank you





The Art of Online Legal Research

Or, how your Supreme Court of Nevada Law Library card is the key to lots of resources from wherever you do legal research and whether ChatGPT will conquer the world.

All about me

- 30+ years as a law librarian!
- B.A. Colorado College (Colorado Springs, CO), M.S.L.S. Catholic University of America (Washington, D.C.), J.D. from Lincoln Memorial University (Knoxville, TN)
- 7 states
- 4 “big law” law firm libraries
- 2 academic law libraries
- 1 federal agency (EPA)
- 1 Supreme Court!! (always save the best for last)

Agenda

- Resources available from the law library – remotely!
- New features from Bloomberg Law, Lexis+, and Westlaw Precision
- Artificial Intelligence & ChatGPT

Legislative histories, 50-State Surveys, etc.
Things you already
know...





SUPREME COURT OF NEVADA

Start your search here...



About the Library ▾

Legal Research ▾

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Chat Currently Offline

LAW LIBRARY CLOSURES

- September 4
- September 29*
- October 25* & 26*
- October 27

*The law library's physical space will be closed but our Reference services are still available by phone, chat, or email.

ACCESS TO THE LAW LIBRARY

- Unvaccinated visitors to the Nevada Supreme Court building are required to wear an appropriate mask at all times while inside Court facilities.
- Entrance to the Nevada Supreme Court building is ONLY through the Carson Street (west) ground level entrance.
- A Marshal will perform a security check on all visitors and confirm that the visitors are here to use the Law Library for legal information/research, access to legal forms, or to make use of a conference room.
- ADA parking is only available in the Stewart Street parking lot. Disabled visitor's needing entrance from the Stewart Street side of the building should contact the Law Library by phone or email prior to their visit to make arrangements for accommodations for the security check.

ASK A LIBRARIAN

- Walk-in & Phone: (775) 684-1640 Monday - Friday, 8:00 am - 5:00 pm (except state holidays)
- [Chat with a Librarian](#) Monday - Friday, 9:00 am - 4:00 pm (except state holidays)
- Email Us: Reference@nvcourts.nv.gov (we will respond during normal business hours)

[50-State Surveys](#) ⓘ

[About the Nevada Supreme Court Law Library](#) ⓘ

[How to Locate the Law: A Guide to Locating Nevada Law and Legal Resources](#) ⓘ

[Justice James W. Hardesty Collection & Creation of the Nevada Court of Appeals](#) ⓘ

[Nevada Administrative Code \(NAC\) Research Guide](#) ⓘ

[Nevada Administrative Docket \(ADKT\) User Guide](#) ⓘ

[Nevada Case Law Research Guide](#) ⓘ

[Nevada Citation Guide](#) ⓘ

[Nevada County and Municipal Codes](#) ⓘ

[Nevada Eviction & Foreclosure Guide](#) ⓘ

[Nevada Judicial Historical Society](#) ⓘ

[Nevada Law Libraries](#) ⓘ

[Nevada Legislative History](#) ⓘ

[Nevada Primary Sources](#) ⓘ

[Nevada Reports Comparative Tables \(1988-present\)](#) ⓘ

[Nevada Statutory Derivation](#) ⓘ

[Nevada Supreme Court Law Library: LexisNexis Digital Library](#) ⓘ

Need a guide on a specific topic?

Please let us know!

reference@nvcourts.nv.gov



SUPREME COURT OF NEVADA

Nevada Supreme Court Law Library

Nevada Supreme Court Law Library / LibGuides / Nevada Supreme Court Law Library JUDICIARY / 50-State Surveys / Existing Surveys

50-State Surveys

Search this Guide

Search

The purpose of this guide is to provide guidance on determining the law on a particular subject across all 50 states (statutory, regulatory, or case law).

Existing Surveys

[Existing 50 State Statutory and Regulatory Surveys](#)

[Westlaw Edge 50-State Surveys Statutory & Regulatory](#)

[National Survey of State Laws \(accessible through HeinOnline\)](#)

[National Conference of State Legislatures Bill Tracking Database](#)

[HeinOnline Subject Compilation of State Laws \(Statutory and Case Law\)](#)

[American Law Reports \(ALR\) Case Law Compilations](#)

[Uniform & Model Laws](#)

[Lexis+ State Law Comparison Tool](#)

[Bloomberg Law Chart Builders](#)

Do It Yourself

[Do-It-Yourself - Jurisdictional Surveys on Westlaw Edge \(Statutory & Federal Regulatory\)](#)

Search the Nevada Supreme Court Law Library Catalog

Existing Surveys

Existing 50 State Statutory and Regulatory Surveys

Federalism is alive and well! Several recent U.S. Supreme Court decisions have reinforced the constitutionally mandated division of power between national and state government. This has increased the need to compare state laws' differences, and to assist you with your research, there are many sources of 50-State surveys, both statutory and regulatory, that may be used as a starting point.

Westlaw Edge 50-State Surveys Statutory & Regulatory

In the Westlaw search bar, begin typing **50 State** and autofill will lead you to suggested Content Pages (usually near the bottom).

THOMSON REUTERS
WESTLAW EDGE

50 state

Suggestions

More ▾

Cases

Content Pages

- [50 State Surveys](#)
- [50 State Regulatory Surveys](#)
- [50 State Statutory Surveys](#)
- [50 State Surveys - Tax](#)
- [50 State Surveys - Labor & Employment](#)



If a survey does not already exist, you can create your own survey, with a little help from [Westlaw's Jurisdictional Surveys](#).

There are two ways to use this service:

1. When you have the citation or text of a statute in one state and want to find similar statutes in other states, click the icon that looks like a price tag.

The screenshot shows the Westlaw Edge interface. At the top, there is a navigation bar with 'Table of Contents', navigation arrows, and 'Outline'. On the right side of this bar is a search icon and a price tag icon. A large red arrow points to the price tag icon. Below the navigation bar, a breadcrumb trail shows the hierarchy: 'West's Nevada Revised Statutes Annotated' > 'Title 23. Public Officers and Employees (Chapters 281-289)' > 'Chapter 284. State Personnel System (Refs & Annos)' > 'Use of Alcohol or Drugs by Employees'. The main content area displays the statute '284.406. Policy concerning use of alcohol or drugs by state employees' with the citation 'N.R.S. 284.406' and a 'Currentness' link. Below the statute text, there is a list of three items: '1. Report for work in an impaired condition resulting from the use of alcohol or drugs;', '2. Consume alcohol while on duty; or', and '3. Unlawfully possess or consume any drugs while on duty, at a work site or on state property.'

- Select the **index terms** to find similar statutes, then click **Create Survey**.
 - **NOTE:** Not all state statutes use the same index terms. Use this feature as a starting point.
- The search results will include statutory sections from every jurisdiction with the same index term(s).
 - The results include subheadings (more specific sub-topics) that you can de-select as needed to reduce the number of total search results.
 - There is also an option to search within your results.

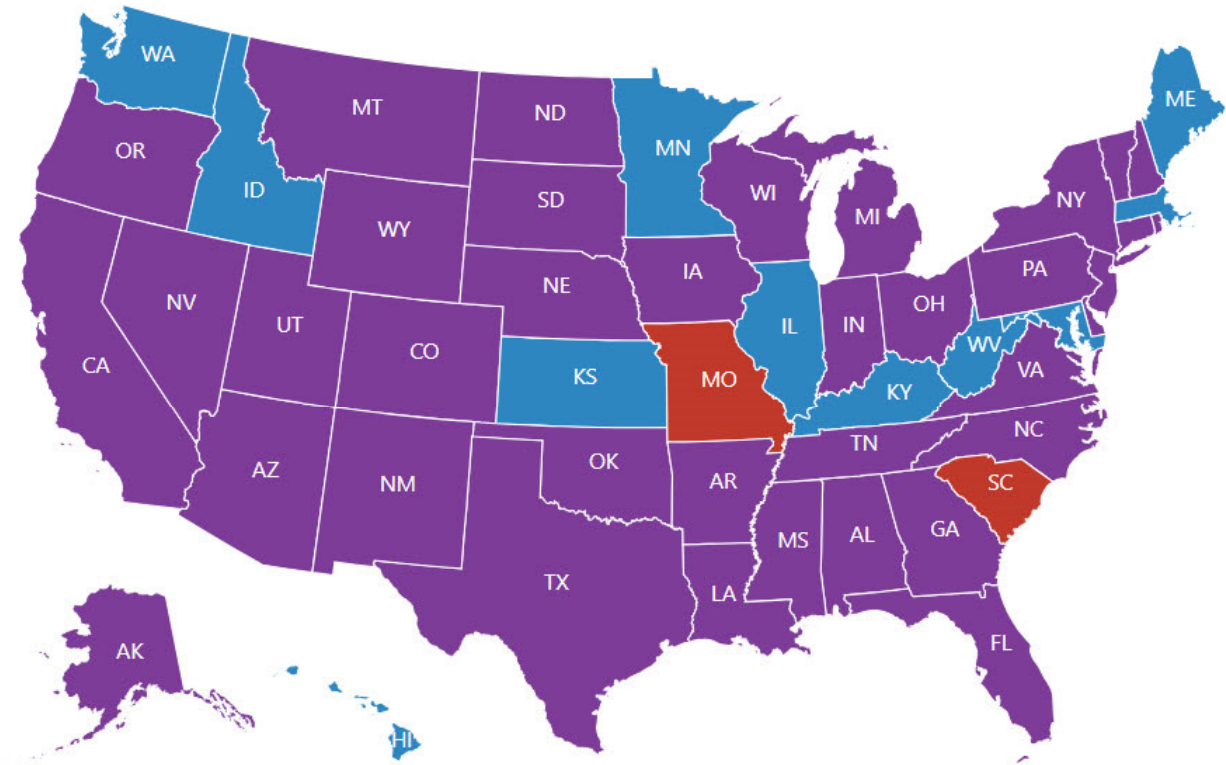
2. Alternatively, you can initiate this type of search directly from the Westlaw Edge home page.

- First, select the **Tools** tab.
- Select **Jurisdictional Surveys**.
 - Enter a statute's citation, or
 - Search for index terms (the search box will offer suggestions of words based on pre-defined index terms). or
 - Browse by topic and add terms.
 - There is also an option to review a list of existing 50-state surveys for the topic selected (see above for Existing Westlaw surveys).

If you need to contact Westlaw, reach out to their Government Customer Service team at statesupport@thomsonreuters.com.

50 State Survey – Similar to NRS 197.190 & NRS 199.280

- Both
- NRS 197.190
- NRS 199.280



CT DE DC MD MA NH NJ RI VT Federal

Select a jurisdiction



Start your search here...



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Keywords



ADVANCED SEARCH

QUICK LINKS

[Law Library Web Site](#)
[Research Guides](#)
[Frequently Asked Questions](#)
[Get a Library Card](#)
[Nevada Appellate Courts](#)
[State of Nevada Self-Help Center](#)

ASK A LIBRARIAN

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HOURS

8:00 am - 5:00 pm
Monday - Friday
(except state holidays)

CHAT

9:00 am - 4:00 pm
Monday - Friday
(except state holidays)

LOCATION

201 S. Carson St., Ste. 100
Carson City, NV 89701

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Log in to your account:

Login:

Password:

LOG IN

[Forgot your password?](#)

Don't have a library card? [Register here for your account/bar code.](#)

Making an Appellate Argument



Judicial Writing Resources



Reference

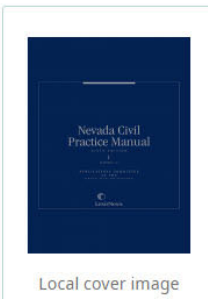
How can we help?

A staff member is online ready to help.

Chat Now

No Thanks

Home > Details for: Nevada civil practice manual /



Normal view

MARC view

Nevada civil practice manual / State Bar of Nevada Publications Committee ; lead editor, Tracy DiFillippo ; editors, Michelle Alarie and 4 others.

Contributor(s): Alarie, Michelle [editor.] | DiFillippo, Tracy [editor.] | State Bar of Nevada. Publications Committee

Publisher: New York, NY : LexisNexis, [2016]-

Edition: Sixth Edition

Description: 2 volumes (loose-leaf) : forms ; 24 cm

ISBN: 1522117687 (print) | 9781522117681 (print)

Subject(s): Civil procedure -- Nevada -- Forms | Civil procedure -- Nevada

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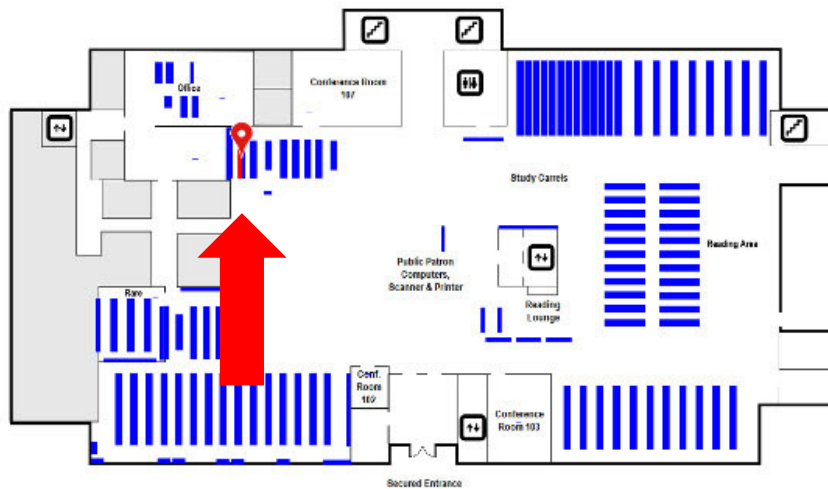
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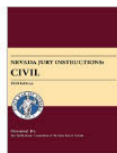
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was fully founded upon the doctrine of prior appropriation. The Court further found that the public trust doctrine existed in the United States, and agreed that such doctrine also applied in Nevada. However, the Court ruled that the public trust doctrine does not apply to water previously adjudicated under the longstanding doctrine of prior appropriation. The court held: We therefore reaffirm that the public trust doctrine applies in Nevada. We also clarify that it applies to rights previously settled under prior appropriation and clarify that the doctrine applies to all waters in the state and the lands submerged beneath navigable waters. The court further stated: Although we recognize that the public trust doctrine applies to prior appropriated rights and that the doctrine has always inhered in Nevada's water law, we hold that Nevada's comprehensive water statutes are already consistent with the public trust doctrine because they (1) constrain water allocations based on the public interest and (2) satisfy all of the elements of the dispensation of public trust property that we established in *Lawrence*. See [127 Nev. at 405, 245 P.3d at 616](#). The above quotations are based upon existing and long-standing laws that require the State Engineer to consider environmental, future growth and public interest issues pursuant to [NRS § 533.370\(3\)\(c\)-\(d\)](#). Inasmuch as the existing statutory law includes the public trust doctrine, and does not allow the reallocation of adjudicated water rights, the Court was not required to answer Question No. 2 concerning compensation of "water taken." The conclusion is that Nevada's water law includes the public trust doctrine, as that doctrine must be considered by the State Engineer when acting upon applications to appropriate or applications to change. [NRS § 533.370](#). [«Pt. XI»«Subpt. B»«I»«A»«11»](#) 4 Waters and Water Rights I.A.11 (2023) [11. Violation of Water Law or Willful Waste of Water](#). Beginning July 1, 2007, the State Engineer has the authority, after notice and opportunity for a hearing, to impose an administrative fine up to \$10,000 per day on any person who violates any provision of Nevada's water laws or regulations, or any permit, certificate, order or decision issued by the State Engineer. [NRS § 533.481\(1\)\(a\)](#); [NRS § 534.193\(1\)](#). The amount of the penalty assessed is based on: (1) the gravity of the violation, (2) any attempts to comply prior to the violation, (3) history of prior violations, and (4) the economic benefit of the violation. Additionally, if a person engages in the unauthorized use or diversion of water, or willful waste of water, the State Engineer may require that person to replace up to 200 percent of the water used, diverted, or wasted. [NRS § 533.481\(1\)\(b\)](#). Prior to July 2007, a misdemeanor was the only consequence for violating any provision of the water law, and thus, the change in the law significantly increases the State Engineer's ability to control the unlawful use and waste of water. The State Engineer has promulgated regulations, (LCB File R024-08) effective September 18, 2008, regarding the ability to impose fines and require replacement

of water. Under the regulations, the State Engineer may issue a warning letter or commence an enforcement action. In the former case, the State Engineer will notify the person of the violation and request corrective action. In the latter case, the State Engineer will issue a finding of alleged violation and issue a violation order. The finding of alleged violation will set forth the alleged violation and any facts that support the allegation. The violation order will specify a deadline in which the person must (1) comply with the requirements of the finding of alleged violation, (2) submit a mitigation plan to the State Engineer, (3) meet with the State Engineer's staff to show cause why the State Engineer should not seek injunctive relief, and (4) submit any other information relating to the violation. The person subject to the finding of alleged violation and enforcement order may request a hearing before an independent advisory committee composed of members of the State Engineer's staff to review the finding and order. The State Engineer will issue a final decision after the hearing, which may be appealed to the district court. Finally, the 2007 amendments to the water law allow the State Engineer to seek injunctive relief to prevent any violation contemplated above. [NRS § 533.482\(1\)](#). Under this statute, the State Engineer is only required to show that a person is engaged, or is about to engage in any act that is considered a violation as described above. [NRS § 533.482\(2\)](#). Further, the State Engineer does not have to show lack of an adequate remedy at law or irreparable harm. [NRS § 533.482\(3\)](#). [«Pt. XI»«Subpt. B»«I»«A»«12»](#) 4 Waters and Water Rights I.A.12 (2023) [12. Water Rights as Real Property Interests](#). Water rights in Nevada are clearly defined as interests in real property. *In re Lompa*, 88 Nev. 541, 501 P.2d 662 (1972). A water right is therefore transferred via a deed or other instrument of conveyance. Transfers or assignments of water rights are specifically authorized by [NRS § 533.383](#), with the State Engineer's office being the repository of deeds. Additionally, in a recent decision the Nevada Supreme Court clarified that water rights are freely alienable property interests that can be conveyed independently of the real property on which they are permitted to be used, and that the anti-speculation doctrine does not limit the ability of a party to acquire a security or ownership interest in water rights separately from the land to which they are placed to beneficial use. *Adaven Mgt., Inc. v. Mt. Falls Acquisition Corp.*, 124 Nev. 770, 191 P.3d 1189 (2008). First, the Court held that [NRS § 533.040](#) does not prohibit a person from transferring water rights separately from the land to which they are appurtenant, either by conveying them in trust as security or selling them outright. The Court concluded that transferring water rights separately from the land does not alter where the water rights could be placed to beneficial use, and thus, does not require the State Engineer's approval under [NRS § 533.040](#). *Id.* at 777, 193 P.3d at 1196. Second, the Court concluded that the anti-speculation doctrine, which "precludes speculative water right acquisitions without a showing of beneficial use," does not

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- New features from Bloomberg Law, Lexis+, and Westlaw Precision

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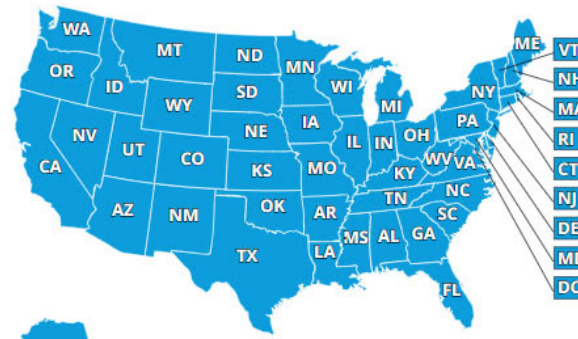
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Chapter 2. Jurisdiction to Review Decisions of Federal Courts

2.I. Introduction

2.1. Constitutional and Statutory Bases of Certiorari Jurisdiction

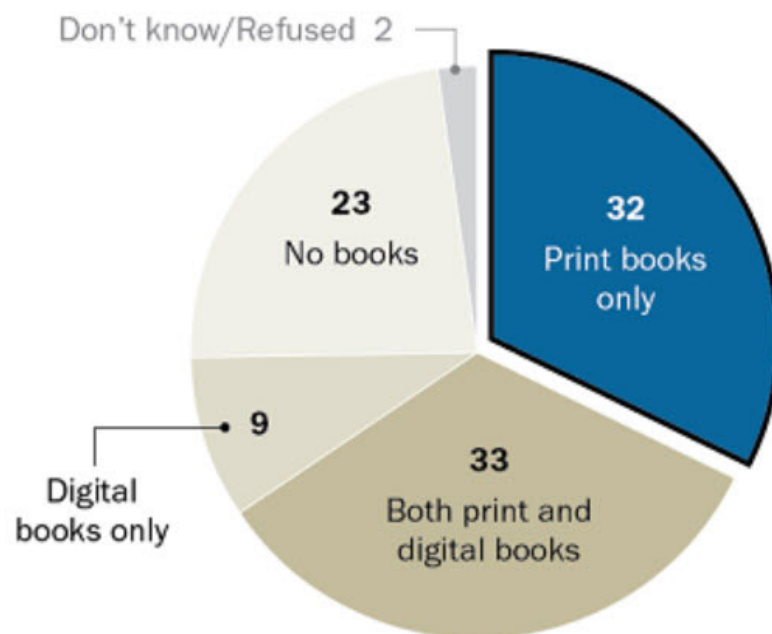
Section 1 of Article III of the Constitution provides that “[t]he judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.” Section 2 of this Article then specifies the types of “cases and controversies” that fall within the “judicial Power of the United States.” Section 2 also states that, with one exception,¹ the Supreme Court “shall have appellate Jurisdiction, both as to Law and Fact,” over the specified “cases and controversies.” This conferral of appellate jurisdiction on the Supreme Court, however, is subject to “such Exceptions, and under such Regulations as the Congress shall make.”²

What emerges from this constitutional description of appellate jurisdiction is that it is Congress, not the Constitution or the Supreme Court, that defines the precise metes and bounds of the Court’s appellate jurisdiction over the specified “cases and controversies.” Congress selects the types of cases and controversies that the Court may review in exercising its congressionally defined jurisdiction. And Congress, not the Court or the Constitution, identifies the lower courts whose judgments may be reviewed by the Court. In short, the existence, the extent, and the limitations of the Court’s appellate jurisdiction are largely creatures of congressional legislation—subject, of course, to the Court’s own interpretation of such legislation.³

For more than two centuries, beginning with the Judiciary Act of 1789,⁴ Congress has provided for appellate review by the Supreme Court of two basic kinds of cases: (1) judgments of specified lower federal courts; and (2) final judgments of the highest state courts that implicate or involve the federal Constitution, treaties, or federal laws. Congress still maintains this federal/state court distinction in describing the scope of the appellate jurisdiction of the Supreme Court. Compare [28 U.S.C. §1254](#) (federal courts) with [28 U.S.C.](#)

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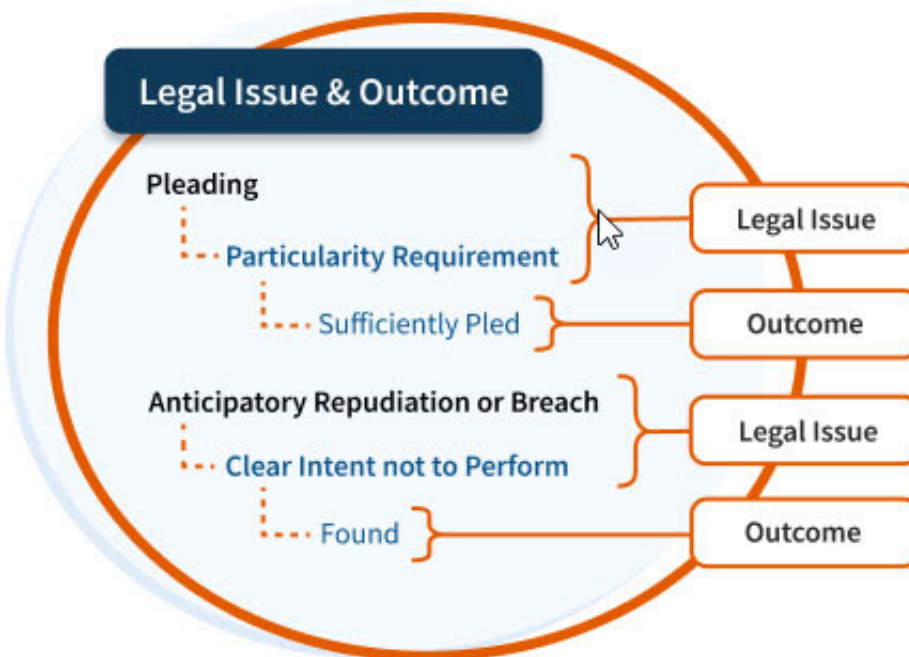


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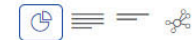
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What is the definition of equitable garnishment?

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Recommended Questions

What is the definition of garnishment?

Garnishment invests a plaintiff-garnishor with the right to satisfy his claim against a defendant with the debts due from a third-person, the garnishee, to the defendant. As against the garnishee, the garnishor occupies the same position as the defendant, and is subject to any defenses available to the garnishee against the defendant.

A State Dep't of Motor Vehicles & Pub. Safety v. Garcia-Mendoza

Nevada Supreme Court | Dec 8, 1998 | 114 Nev. 1187 | Cases

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What is garnishment?

Garnishment invests a plaintiff-garnishor with the right to satisfy his claim against a defendant with the debts due from a third-person, the garnishee, to the defendant. As against the garnishee, the garnishor occupies the same position as the defendant, and is subject to any defenses available to the garnishee against the defendant.

▲ Board of Trustees v. Durable Developers

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▲ UNION INDEM. CO. v. A. D. DRUMM, JR., INC.

Supreme Court of Nevada | Jul 31, 1937 | 57 Nev. 252

OVERVIEW: No equitable lien existed in favor of job creditors after a contractor went bankrupt because the contract for the job between the State of Nevada, the contractor, and the job creditors did not clearly express an intention to create such a lien.

Agenda

- ~~Resources available from the law library – remotely!~~
- ~~New features from Bloomberg Law, Lexis+, and Westlaw Precision~~
- Artificial Intelligence and ChatGPT

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Ethics (Attorneys vs. SRLs)

- Rule 1.1 – likely not an attorney issue
- Good news: if a self-represented litigant uses ChatGPT, it should be obvious
- [AI Terminology for Legal Information Professionals](#)

Ethics (and hallucinations)

The New York Times

The Risk of Generative AI Without Guardrails

Here's What Happens When Your Lawyer Uses ChatGPT



The lawsuit began like so many others: A man named Roberto Mata sued the airline Avianca, saying he was injured when a metal serving cart struck his knee during a flight to Kennedy International Airport in New York.

There was just one hitch: No one — not the airline's lawyers, not even the judge himself — could find the decisions or the quotations cited and summarized in the brief.

That was because ChatGPT had invented everything.

effect of the automatic stay on a statute of limitations.”

There was just one hitch: No one — not the airline's lawyers, not even the judge himself — could find the decisions or the quotations cited and summarized in the brief.

That was because ChatGPT had invented everything.

The lawyer who created the brief, Steven A. Schwartz of the firm Levidow, Levidow & Oberman, threw himself on the mercy of the court on Thursday, saying in an affidavit that he had used the artificial intelligence program to do his legal research — “a source that has revealed itself to be unreliable.”

Recommendations

- Judge Castel walked Schwartz through his faulty brief, asking whether he'd thought to check the cases on legal research databases, in books at a law library, or even on Google. Schwartz's answer each time was "no."
- The judge asked Schwartz whether he was suspicious of one of the main phony cases cited in the brief, the non-existent "Varghese v. China South Airlines Co.," which the judge said included information that made no sense.
- "Can we agree that is legal gibberish?" Castel asked.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**STANDING ORDER RE: ARTIFICIAL INTELLIGENCE (“AI”) IN CASES
ASSIGNED TO JUDGE BAYLSON**

If any attorney for a party, or a *pro se* party, has used Artificial Intelligence (“AI”) in the preparation of any complaint, answer, motion, brief, or other paper, filed with the Court, and assigned to Judge Michael M. Baylson, **MUST**, in a clear and plain factual statement, disclose that AI has been used in any way in the preparation of the filing, and **CERTIFY**, that each and every citation to the law or the record in the paper, has been verified as accurate.

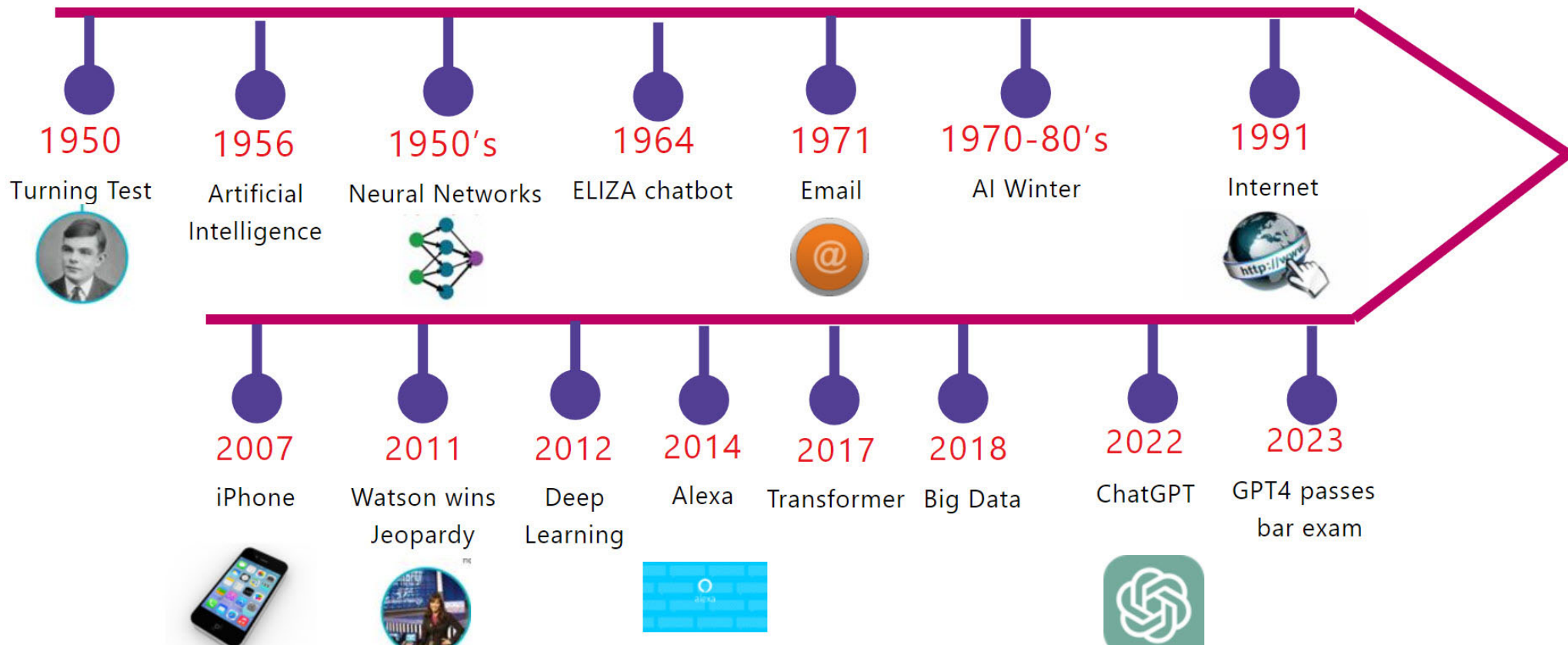
DATED: 6/6/2023

BY THE COURT:

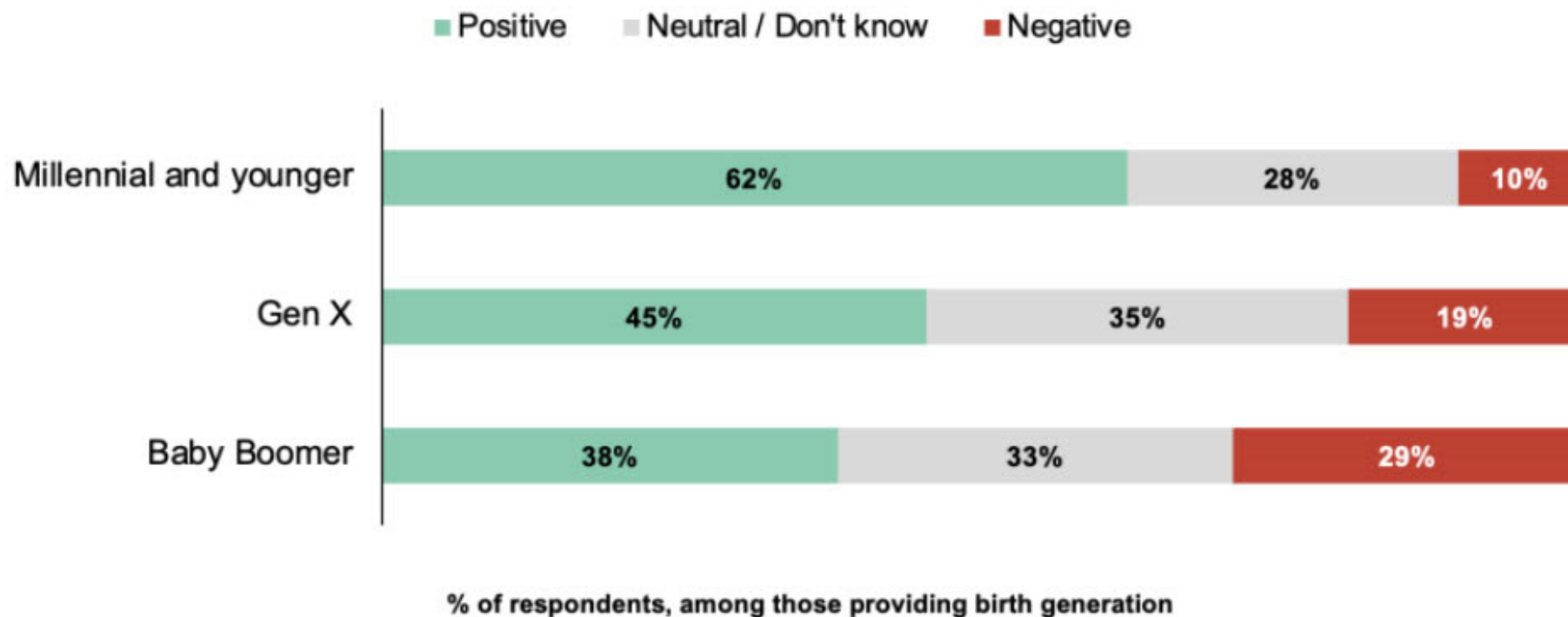
/s/ MICHAEL M. BAYLSON

MICHAEL M. BAYLSON, U.S.D.J.

Artificial Intelligence Timeline



Expected Effect of AI on Line of Work, by Generation



Q13: In the coming years, do you think AI will have a positive or negative impact on your line of work? (Select one)
Total n=642; Source: Aberdeen, March 2023

Home > Opinions > AI

Why AI Is the Nemesis of Truth Itself

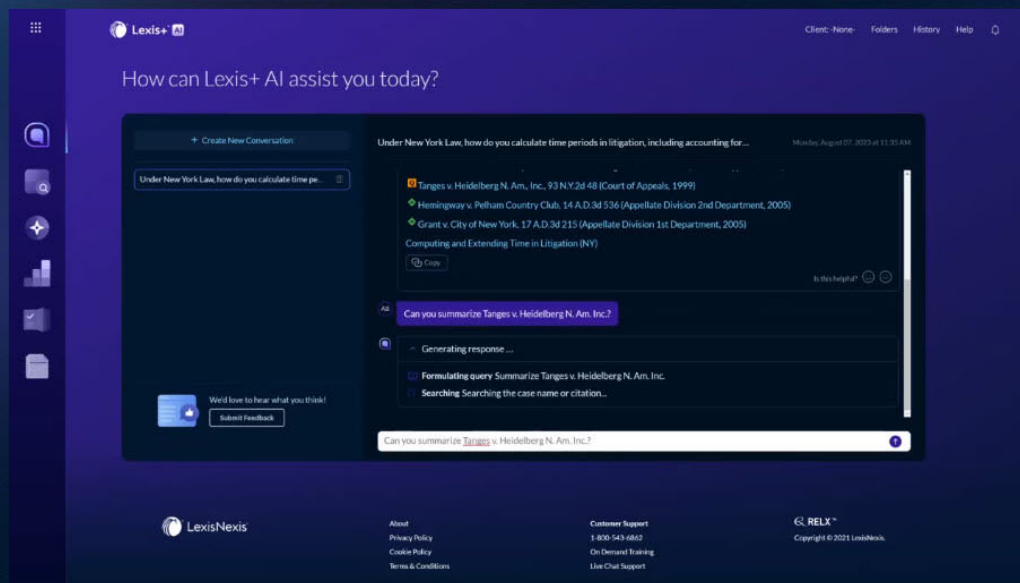
AI isn't going to take over the world. It probably won't even to take your job. The real threat is far more insidious—the AI boom heralds the erosion of truth and fact, and it's already happening.



By [Neil J. Rubenking](#)

July 31, 2023





AI Search That Interacts

Conversational Search

Interact with Lexis+ AI like you would a trusted colleague who intelligently and conversationally responds to your requests.

JOIN TO START

Meet your new AI legal assistant

CoCounsel does document review, legal research memos, deposition preparation, and contract analysis in minutes—with results you can trust.

Free trial

Which documents should I review?

Questions to answer from the documents

Does the cautionary statement refer to drilling risks?



Is the Bakken Basin mentioned?



Get your answers

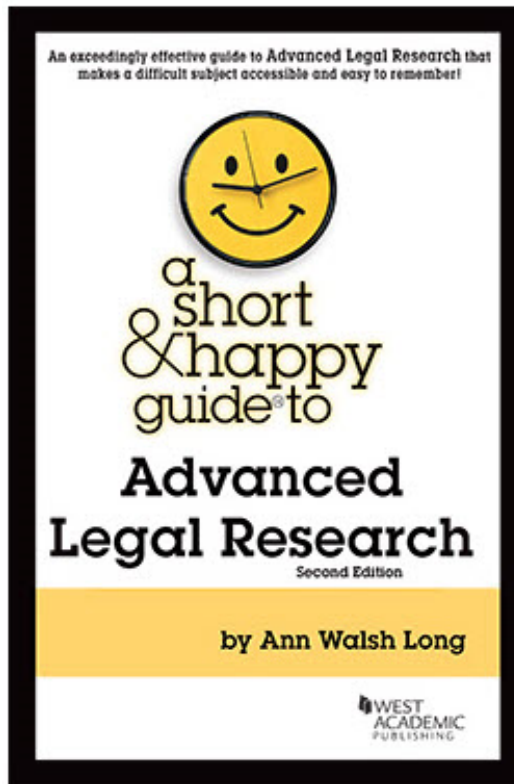
Review Documents

Search a Database

Legal Research Memo

More Skills >





Ann Walsh Long, Director, Law Library

Supreme Court of Nevada Law Library
awalshlong@nvcourts.nv.gov

AWL June 2023

E-DISCOVERY, TIPS AND TRICKS

Presented by:

Jon Holpuch

HOLO Discovery

What is E-Discovery

- E-discovery, also known as electronic discovery, refers to the process of identifying, collecting, and producing electronically stored information (ESI) in response to a request for production in a legal proceeding. This can include emails, documents, social media posts, and other types of digital data.

NRCP 16.1

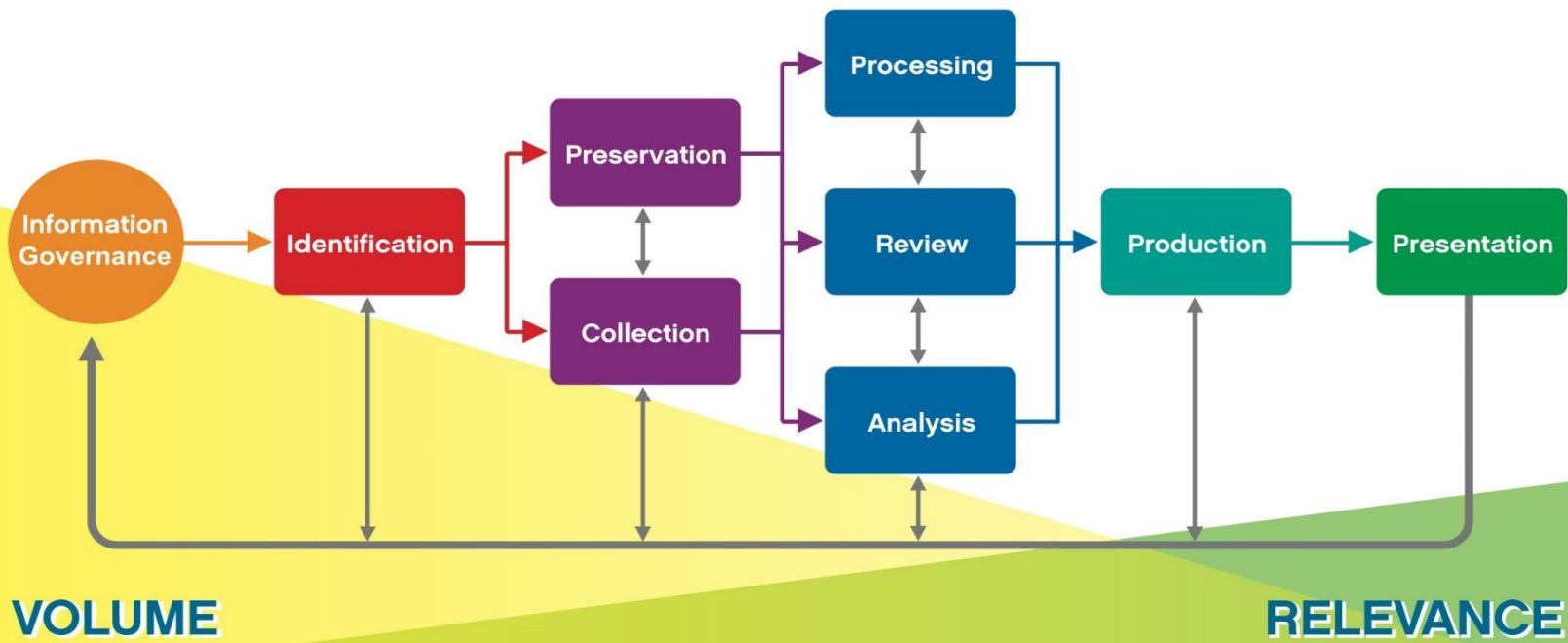
- Amended effective March 1, 2019
- Under the Nevada Rules of Civil Procedure, parties to a legal proceeding have a duty to preserve any ESI that may be relevant to the case. This means that they must take reasonable steps to prevent the destruction or alteration of any ESI that could be used as evidence in the case.
- In addition, the Nevada Rules of Civil Procedure require parties to disclose any ESI that is relevant to the case. This means that parties must produce ESI that is responsive to the other party's request for production, unless the ESI is privileged or otherwise protected from disclosure.

NRCP 16.1

- “Rule 16.1(b)(4) adopts the Federal Rules of Civil Procedure (FRCP) requirement that parties discuss the preservation of discoverable evidence, including electronically stored information, trade secrets and confidential information, including whether a confidentiality order or a motion for a protective order under Rule 26(c) is necessary.” (nvbar.org)
- This is a good time to discuss production protocols.

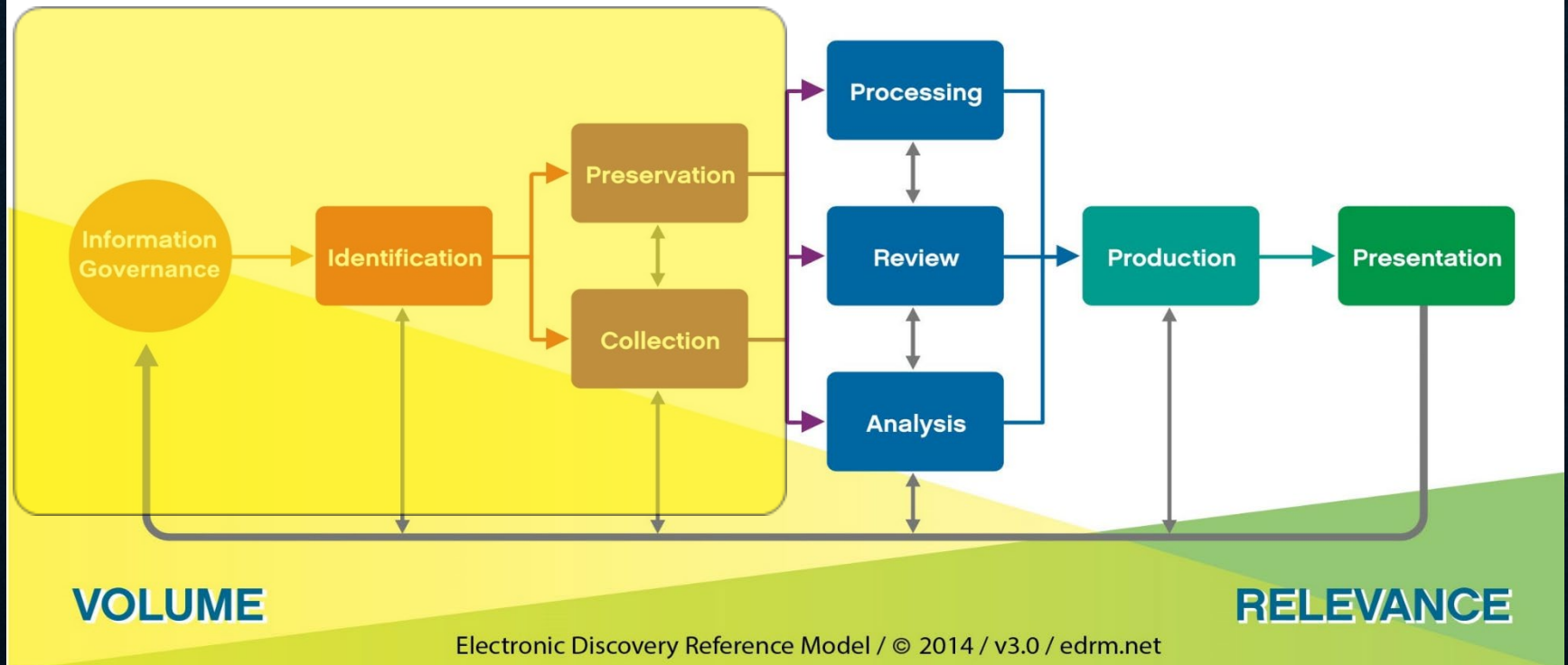
ELECTRONIC DATA REFERENCE MODEL

Electronic Discovery Reference Model



ELECTRONIC DATA REFERENCE MODEL

Electronic Discovery Reference Model





DATA SOURCES

- Where can data be found?



CLOUD DATA SOURCES

- On the internet and in the cloud.

facebook



twitter



Office 365



Instagram

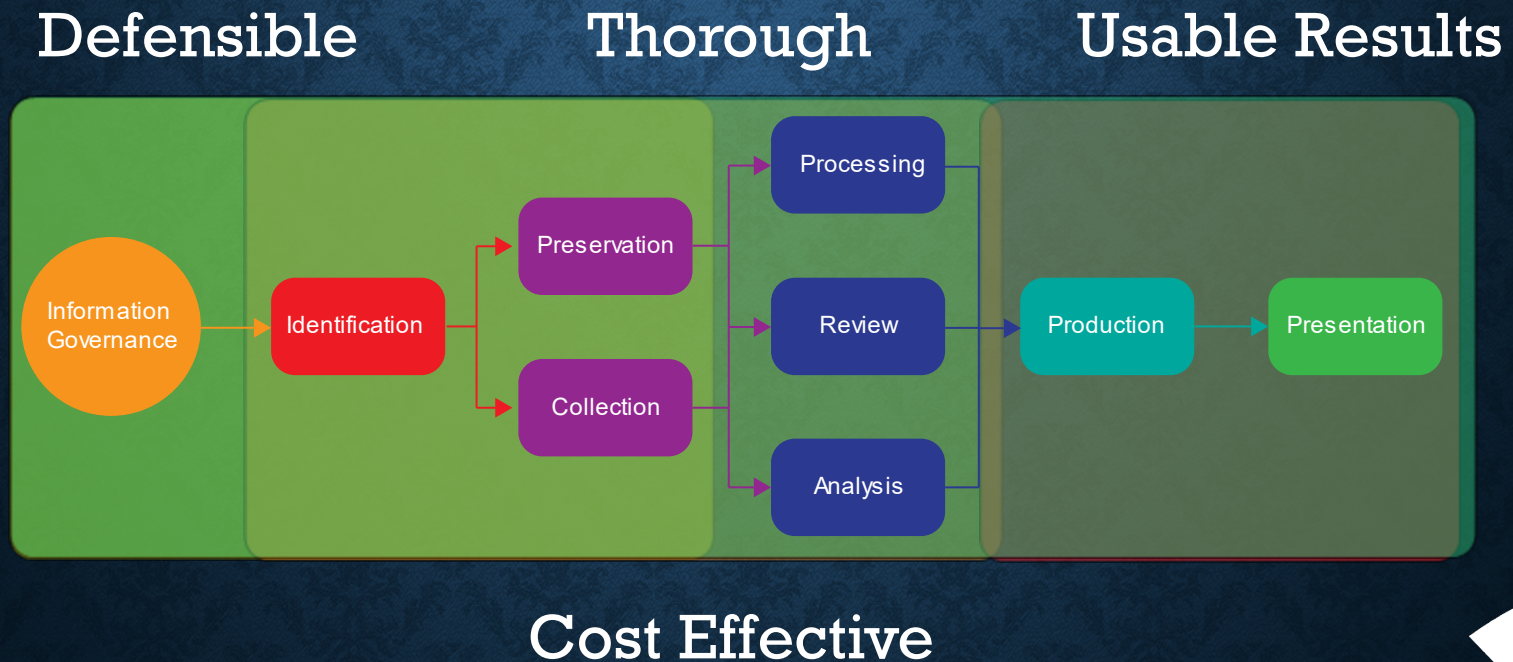


YouTube



Telegram

E-DISCOVERY GOALS



IDENTIFY SOURCES

- List of key participants from the company
- Type of email system (exchange/cloud/pop)
- List of devices that they used (laptop/cell/desktop), make, model, serial numbers
- How old are these devices?
- What are the operating systems on the devices?
- Data retention policy (if any)
- Legal hold policy (if any)
- What programs are used to view the emails (outlook, thunderbird, etc.)?
- List of email accounts used
- List of active users during the relevant time period
- List of key participants personal email accounts
- Relevant time period
- List of all cloud accounts used
- List of all social media accounts
- List of internal messenger/chat applications
- List of servers, file shares, network storage devices
- List of External hard drives, thumb drives or other removeable media




PRESERVATION/LEGAL HOLD

The Parties represent that they have issued litigation hold notices to those custodians with data, and persons or entities responsible for maintenance of non-custodial data, which, based upon then-current information available, are reasonably likely to contain discoverable information.

PHYSICAL COLLECTION

- Chain of Custody preserved during collection



Chain of Custody

Case Information

Case Name:

Holo Matter Number:

Device Reference ID	Make	Model	Serial Number
001			
002			
003			
004			
005			
006			
007			

Device(s)	Date/Time	Received From	Received By	Purpose
	Date Time	Signature Print	Signature Print	
	Date Time	Signature Print	Signature Print	
	Date Time	Signature Print	Signature Print	
	Date Time	Signature Print	Signature Print	
	Date Time	Signature Print	Signature Print	
	Date Time	Signature Print	Signature Print	

3016 W. Charleston Blvd, Suite 170 | Las Vegas, NV 89102

702.333.4321 | holo-discovery.com

LAPTOPS/DESKTOPS

- Complete Forensic Image Created
 - By making a mirror image, or exact copy, sector by sector, of the hard disk
 - Most complete and defensible way to preserve
 - Allows analysis and possible recovery of deleted data

LAPTOPS/DESKTOPS

- Active File Collection / Logical Collection
 - Only files/folders actively available on the computer are collected
 - Will not include deleted data

MOBILE DEVICE PRESERVATION

- Information Available on Devices
 - Text messages/Chat Messages
 - Call History
 - Photos/Videos/Audio
 - Voice Mail
 - Browser History
 - Location Information
 - Wi-Fi Hot Spot Connections
 - App Information
 - Deleted Data

MOBILE DEVICE PRESERVATION

- Screenshot-only collection may be inadequate
- Commercial collection software available and more comprehensive
- We use:



WEB-BASED EMAIL & CLOUD APPLICATIONS

- Some email systems include e-discovery tools.
- Specialized software allows remote data collection
- Will require 2-factor authentication (client providing key codes to allow us remote access)
- Client privacy protected in various ways:
 - Temporary passwords
 - On-site collection

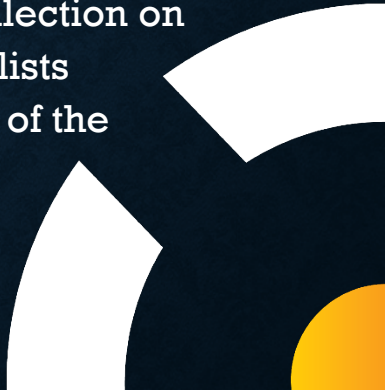


SOCIAL MEDIA PRESERVATION

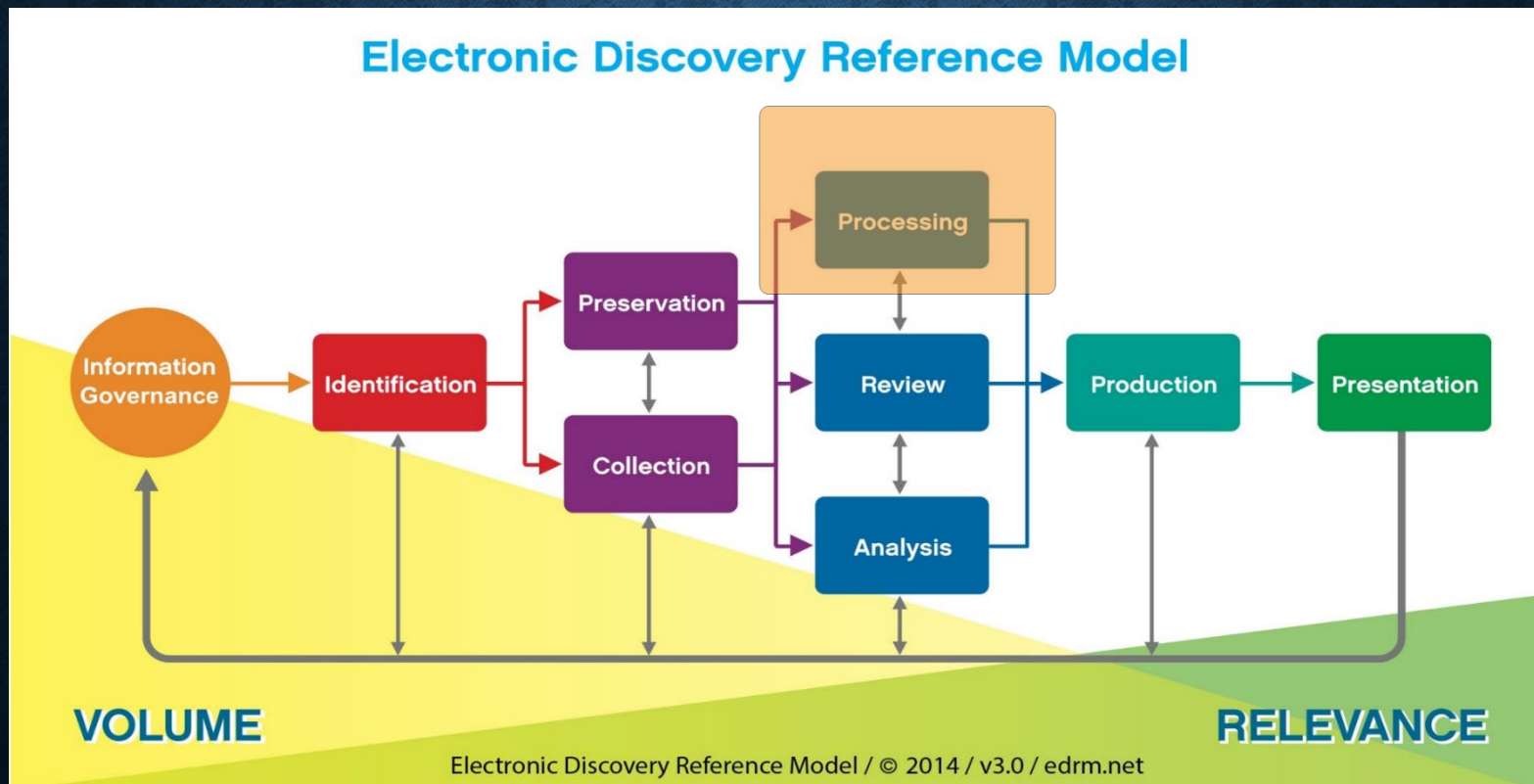
- Facebook, Instagram, Twitter, LinkedIn, YouTube, etc.
- Specialized software, remote collection
- 2-factor authentication
- Client privacy protected
 - Temp passwords, on-site collection
- Report includes:
 - Posts/comments
 - Photos/videos
 - Metadata



SELF COLLECTION – THE RISKS

- “Attorneys have a duty to oversee their clients’ collection of information and documents, especially when ESI is involved, during the discovery process. Although clients can certainly be tasked with searching for, collecting, and producing discovery, it must be accomplished under the advice and supervision of counsel, or at least with counsel possessing sufficient knowledge of the process utilized by the client. Parties and clients, who are often lay persons, do not normally have the knowledge and expertise to understand their discovery obligations, to conduct appropriate searches, to collect responsive discovery, and then to fully produce it, especially when dealing with ESI, without counsel’s guiding hand.”
 - Applicable case law informs that “self collection by a layperson of information on an electronic device is highly problematic and raises a real risk that data could be destroyed or corrupted.”
 - Most of our clients utilize some manner of data identification and self-collection on their cases. The issue comes down to oversight and supervision. The panelists admitted that, while self collection is not a best practice, it happens in most of the cases they see.
- 

ELECTRONIC DATA REFERENCE MODEL



DATA PROCESSING

- 188,000,000 emails are sent *every minute* (Domo)
- Worldwide, there are 40 Zettabytes of data
 - That's 40,000,000,000,000,000,000,000 Bytes, or
 - 40 times the number of stars in the observable universe
- How can we process data in an efficient way?

DATA PROCESSING - FILTERING

- Date Filters – What is the relevant date range?
- Document Type Filters – Emails, Office Documents, CAD
- De-Duplication
- Search Terms
- Email Threading
- Email Participant Lists

DATA PROCESSING – SEARCH TERMS

- The Enron data contains 182,170 documents.
- There is a custodian named Andrea Ring. How can we filter her emails?
 - Search for “*Ring*”. This returns 769 documents, but may contain false positives.
 - Search for “*Andrea*” w/2 “*Ring*”. This returns 244 documents.



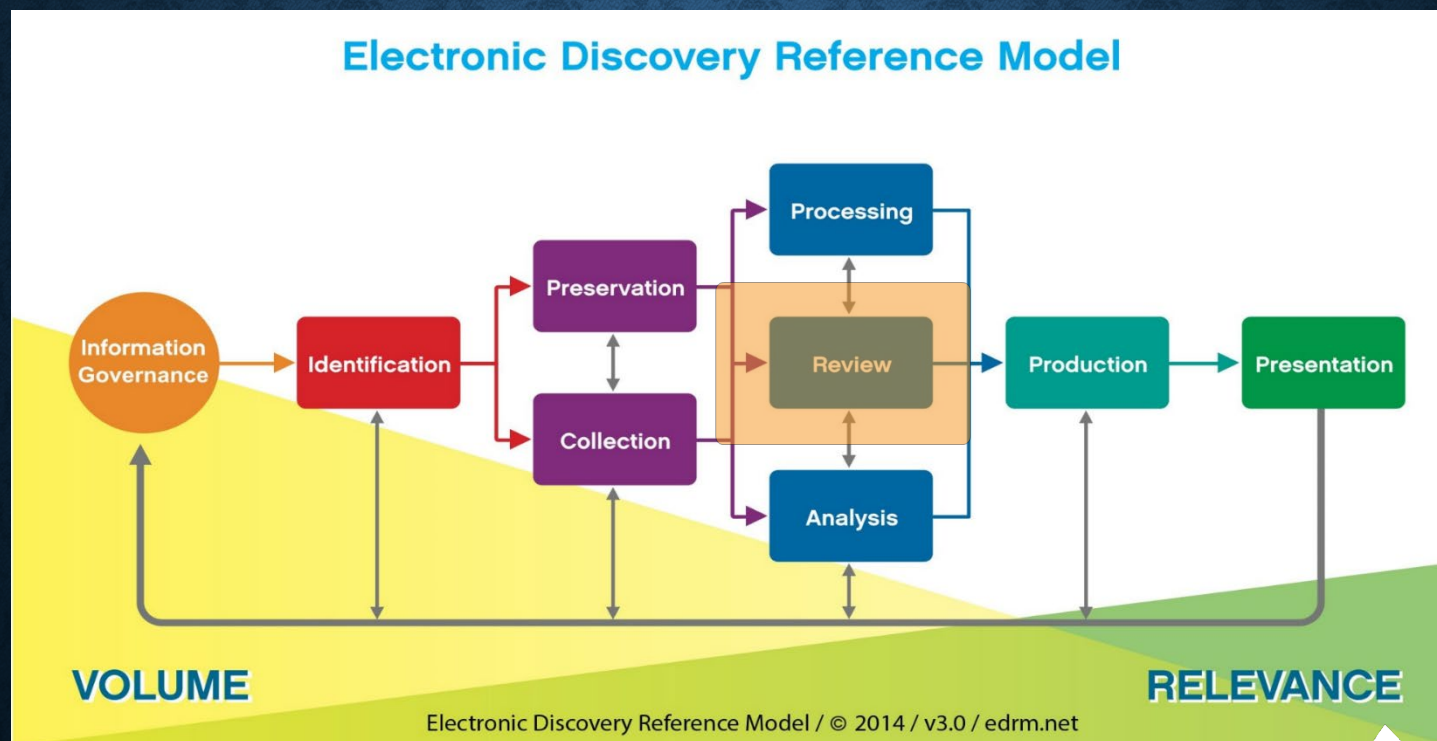
DATA PROCESSING – METADATA

- Metadata is “data about data”.
 - Information about files and documents
 - Dates and times (Last Modified Date, Sent Date)
 - Author/Sender/Recipients
 - Location information (GPS coordinates)
- During processing, metadata is extracted from documents and can be provided as part of productions





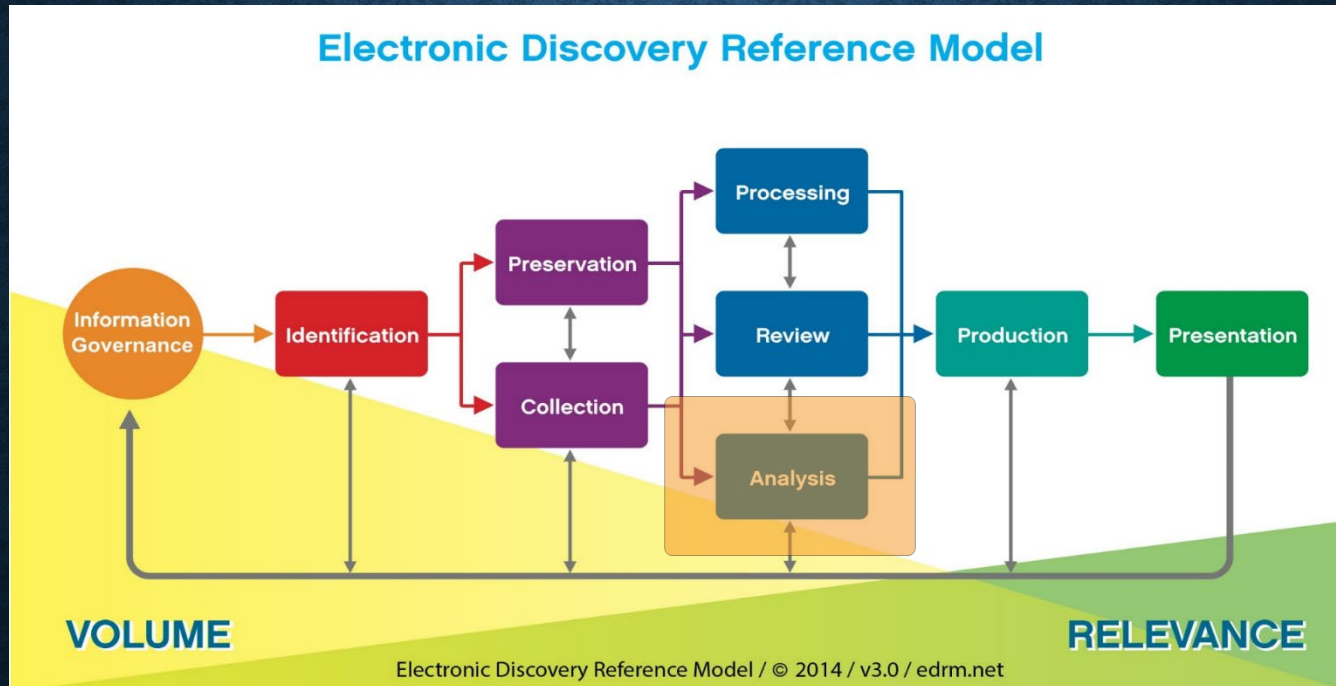
ELECTRONIC DATA REFERENCE MODEL



REVIEW

- How many documents to review?
 - Smaller sets can be reviewed as PDF files
 - Larger sets would require a review platform and/or teams to review
- Native Files vs. Image Files
 - Native files are typically smaller in size than image files, but may need to be reviewed in review platforms if you don't have the software
 - PDF image files can easily be reviewed from your computer
 - Tiff image files are best reviewed using a review platform

ELECTRONIC DATA REFERENCE MODEL










DATABASE DOCUMENT LIST VIEW

<div><div><div></div><div></div><div></div><div></div><div></div></div><div><div>Filter</div></div></div> <div><div>Keyword Search</div><div>Enter Search Terms</div></div>						
<div><div><div></div><div></div><div></div><div></div><div></div></div><div><div>Filter</div></div></div> <div><div>Demo Workspace</div><div><div>Documents to Review</div><div>Already Reviewed</div><div>Audio Files</div><div>Custodians</div><div>Test Move</div><div>Production Documents</div></div></div>						
Bates Beg	Bates End	Unified Title	Date Sent	Email From	Email To	Email CC
<div>Filter</div>	<div>Filter</div>	<div>Filter</div>	<div>(All)</div>	<div>Filter</div>	<div>Filter</div>	<div>Filter</div>
DEMO000001	DEMO000001	RE: Companies and Areas	05/21/2001 3:48 PM	Forster David <David.Forster@ENRON.com>	Zipper Andy <Andy.Zipper@ENRON.com>	
DEMO000002	DEMO000002	RE: Companies and Areas	05/21/2001 3:58 PM	Forster David <David.Forster@ENRON.com>	Zipper Andy <Andy.Zipper@ENRON.com>	
DEMO000003	DEMO000003	FW: Recommended Offer by ICE for IPE Holdings	05/24/2001 11:27 AM	Piper Greg <Greg.Piper@ENRON.com>	Zipper Andy <Andy.Zipper@ENRON.com>	Boyd Justin <justin.boyd@enron.com>; Brown Michael <michael.r.brown@enron.com>

DATABASE DOCUMENT AND CODING

90%



Search within Document

From: Forster David <David.Forster@ENRON.com>

Sent: Monday, May 21, 2001 3:49 PM

To: Zipper Andy <Andy.Zipper@ENRON.com>

Subject: RE: Companies and Areas

OK - we'll get on the Crude Oil list right away - and I'll touch base with John Nowlan.

I assume that Gas & Power is still an area we will hold off on for now?

Dave

-----Original Message-----

From: Zipper, Andy

Sent: Monday, May 21, 2001 1:36 PM

To: Forster, David

Subject: RE: Companies and Areas

I would like to add Energy Trading

with two subser's:

Gas & Power

Crude Oil and Refined Products

I would particularly like to talk to every Crude and REfined supply and trading organization out there.

EDRM: Enron Email Data Set has been produced in EML, PST and NSF format by ZL Technologies, Inc. This Data Set is licensed under a Creative Commons Attribution 3.0 United States License <<http://creativecommons.org/licenses/by/3.0/us/>> . To provide attribution, please cite to "ZL Technologies, Inc. (<http://www.zli.com>)."

Save & Next

Save

Cancel

First Pass ...

First Pass Review

Control Number

AZIPPER_0007291

Bates Beg

DEM0000001

Bates End

DEM0000001

Bates Beg Attach

DEM0000001

Bates End Attach

DEM0000001

Responsive Designation

☒ Responsive

☐ Non-Responsive

☐ Needs Further Review

☐ Technical Issue

☐ test

Manage

For Further Review

☐

Privilege Designation

☐ Accountant Client Privilege

☒ Attorney Client Communication

☐ Attorney Work Product

Manage

Confidential Designation

☐ Confidential

☒ Highly Confidential

☐ Attorneys' Eyes Only

☐ Confidential Subject to Protective Order

☐ Highly Confidential Subject to Protective Order

Manage

Attorney Review Comments

ANALYTICS

- Email Threading
 - Groups emails by their conversation.
 - The top-most emails and emails with attachments are known as “Inclusive Emails”. These can be reviewed.
 - “Non-Inclusive Emails” can be set aside or produced along with the inclusive ones.

ANALYTICS

- Email Threading



ANALYTICS


- Near-Duplication
 - Near Duplication compares the text of documents and generates a similarity score.
 - While this can be useful for identifying similar documents, it is not as accurate as a true de-duplication.

ANALYTICS

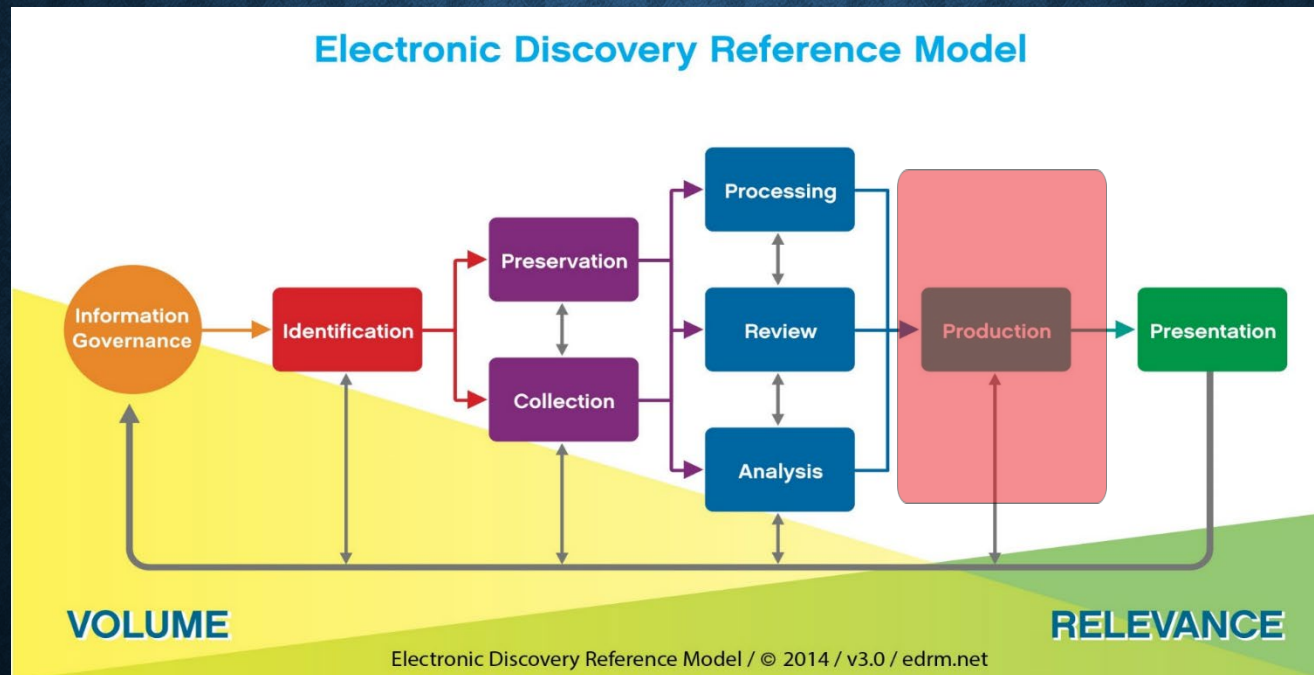
- Near-Duplication
 - Consider the phrases:
 - “Hello I am Sam. Do you like Green Eggs and Ham? I do like Green Eggs and Ham.”
 - “Hello I am Sam. Do you like Green Eggs and Ham? I do not like Green Eggs and Ham.”
 - The first phrase is 95.18% similar to the second phrase using the Damerau-Levenshtein algorithm.



A.I. ASSISTED REVIEW

- One or more reviewers code documents for relevance.
 - Artificial intelligence is then used to apply the same coding decisions to similar documents.
 - In recent cases, we have used the following process for TAR:
 - Reviewing firm codes a round of documents for relevance and privilege.
 - Non-privileged documents are sent to opposing counsel for review and confirmation that coding decisions are correct.
 - Assisted Review ran against entire set of documents to code for relevance.
 - Additional rounds repeated as needed
 - Reviewing firm performs final round of privilege review, and all relevant, non-privileged documents produced to opposition.
- 

ELECTRONIC DATA REFERENCE MODEL



PRODUCTION

- **Establish Protocol Early in Case (NRCP 16 Conference)**
- NRCP Rule 34.a(1)(A) “... to produce ... any designated documents or electronically stored information ... stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a **reasonably usable form.**”
- Native Files vs. Image Files
- Native productions are more cost effective
- Image files can be stamped to identify each page of each document
- We recommend reviewing native files, but producing image files

PRODUCTION SPECIFICATIONS

- PDF
 - Works well with small productions (1,000 documents or less)
- Images with Load Files
 - Recommended for larger productions
- Natives with Load Files
 - Recommended for larger productions
 - No Bates stamps. The file is given a unique number similar to a Bates stamp.
 - Special care must be given if files are used in deposition or trial such as stamping the document on the page level using the unique number and adding .0001, .0002 and so on on the page level.

ESI PROTOCOL

1
2 I. IT IS HEREBY ORDERED, the Court, having considered the positions of the parties
3 regarding matters affecting the discovery of electronically-stored information
4 ("eDiscovery") hereby orders compliance with the following procedures regarding the
5 search for and production of electronically stored information ("ESI") and other documents
6 in this case, which the Court finds appropriate. SCOPE

7 Nothing herein shall enlarge or affect the proper scope of discovery in this case, nor shall
8 anything herein imply that any documents or ESI collected or produced under the terms of this
9 protocol are properly discoverable, relevant, or admissible in this action or any other proceeding,
10 whether regulatory or judicial or other.

11 This Order shall apply to all ESI produced by the Parties in this action and to productions of
12 ESI by third parties in response to subpoenas. Any request for documents directed to non-parties must
13 be accompanied by a copy of this Order. Nothing in this Order shall limit the right of a non-party to
14 seek modification of this Order if its terms are unreasonably burdensome in comparison to the volume
15 of data to be produced. Such modification may be obtained by stipulation with the parties or by motion
16 to this Court.

17 II. DEFINITIONS

18 The following definitions will apply in this Order:

19 "Bates Number" means a unique alphanumeric identifier associated with every physical sheet
20 of paper, electronic file, electronically stored Tiff/PDF image, or other tangible thing, consisting of:
21 (1) an alphabetic portion identifying the Producing Party; and (2) a numeric portion incremented
22 according to a scheme defined at the Producing Party's discretion to ensure that the alphanumeric
23 identifier for each physical sheet of paper, electronic file, electronically stored Tiff/PDF image, or
24 other tangible thing is unique. The alphanumeric identifier shall be no more than eighteen (18)
25 characters in length.

26 "ESI" means any information that was created, manipulated, communicated, stored and best
27 utilized in digital form, requiring the use of computer hardware and software including writings,
28 drawings, graphs, charts, photographs, sound recordings, images, and other data or data



DISPUTES INVOLVING SPOILIATION OR PRODUCTION

- Consider establishing a Third Party Protocol
 - Often we are listed as a neutral third party to ensure all data is collected, handled, and produced in a proper format.
- Save on costs.
- Defines search terms and parameters with all parties.
- Collections performed in a proper format.
- Consistent production protocol and documentation.

FORENSIC INSPECTION PROTOCOL



Protocol for Digital Forensic Inspection

I. Forensic Inspector

On behalf of the parties, HOLO Discovery ("HOLO") will conduct a forensic acquisition of both the Plaintiff's and Defendants' digital data storage devices and extract the agreed-upon file(s) utilizing digital forensic software and analysis.

II. Confidentiality

As an officer of the Court, HOLO's inspection of electronic media will not waive any applicable privilege or doctrine or principle assuring the confidentiality of information contained therein. HOLO will maintain all information in the strictest confidence. No information learned by HOLO shall be disclosed except pursuant to the terms of this Order, other direction by the Court, or as business or legally necessary to complete the electronic discovery protocol.

III. Devices

Parties will list the potentially relevant electronic devices including laptops, desktops, cellular devices, servers, shared files, external hard drives, billing, and project-based applications, cloud accounts, etc. Counsel will meet and confer and direct HOLO on which devices they would like imaged.

IV. Search Criteria

Parties will agree on an initial set of search terms to be applied to filter the data for relevant information. A search term keyword hit list will be circulated amongst the appropriate parties in which counsel will meet and confer to determine if the criteria for certain terms need to be modified.

IV. Acquisition and Analysis

HOLO Discovery uses a variety of forensic imaging tools based on the status of the devices to collect. The imaging tools that HOLO uses are: Tableau Forensic Imager, FTK Imager, Sumuri Paladin, OSForensics, OSF Clone, and others as needed. When possible, HOLO Discovery uses hardware and software-based write-blocking tools.

HOLO will then analyze the hard drives, per the agreement of the parties. Items potentially included in the analysis are as follows:

- Recover deleted data from email container files and unallocated space.
- Generate a browser history report to identify any data that had been uploaded from a browser or if a web-based email was being used.
- Search the forensic images for the history of web-based email. Attempt to recover any emails.
- Search for any cloud services installed on the computers (Dropbox, etc.).
- Create a list of recently accessed USB devices.
- Search the Jump Lists for a list of recently and frequently accessed documents.
- Apply agreed-upon search criteria
- Export data responsive data to native format

FINAL THOUGHTS

- When possible, use NRCP rules to determine production of ESI.
- Encourage or require early conferencing.
- If needed, let the parties educate you about the technology.
- To the extent possible, let the parties work out their own agreements.
- Rule quickly on ESI disputes.
- Where costs can be an issue, consider cost-shifting or cost-sharing among parties.
- Think ahead to how the requested ESI will be used in the courtroom, and plan ahead for the outcome.

E-DISCOVERY, TIPS AND TRICKS

- Questions?
- Comments?

Jon Holpuch

HOLO Discovery

A decorative graphic in the bottom right corner consisting of a white arc and a yellow circle.