

Avoid Getting Soaked by eDiscovery Costs

A Study of Raine Group v. Reign Capital





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Our Panelists



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On Tap Today...

- Proportionality Rules and Trends Today
- *Raine Group v. Reign Capital* – Watch the Puddles
- Early Case Strategy
- Meet & Confer – Be Prepared
- Deploying a Reasonable and Targeted Discovery Strategy
- Q&A

Proportionality Rules and Trends Today

FRCP 2015 Amendments

Rule 26(b)(1): Duty to Disclose, General Provisions Governing Discovery; Discovery Scope and Limits; Scope in General

Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is **relevant** to any party's claim or defense and **proportional** to the needs of the case, considering the:

- 1) the **importance** of the **issues** at stake in the action;
- 2) the **amount** in controversy;
- 3) the parties' relative **access** to relevant information;
- 4) the parties' **resources**;
- 5) the **importance** of the **discovery** in resolving the issues; and
- 6) whether the **burden** or expense of the proposed discovery outweighs its likely **benefit**. Information within this scope of discovery need not be admissible in evidence to be discoverable.

**PERMISSION
GRANTED**

The Sedona Principles, Principle 6

“Responding parties are best situated to evaluate the procedures, methodologies, and technologies appropriate for preserving and producing their own electronically stored information.”

- **Comment 6.a.** A responding party should determine how to meet its own preservation and production obligations.
- **Comment 6.b.** Responding parties should be permitted to fulfill their preservation and discovery obligations without preemptive restraint.
- **Comment 6.c.** Documentation and validation of discovery processes.
- **Comment 6.d.** Rule 34 inspections of electronic information systems are disfavored.
- **Comment 6.e.** Use and role of discovery counsel, consultants, and vendors.

Case Study

Raine Group v. Reign Capital (S.D.N.Y., Feb. 22, 2022)

- Rules 26 and 34 require parties to conduct a **reasonable** search for materials **relevant** to the claims and defenses.
- A reasonable inquiry is satisfied if the investigation undertaken and conclusions drawn therefrom are **reasonable under the circumstances**.
- Parties can determine the contours of a reasonable search by eliminating custodians or locations with redundant information, eliminating inaccessible sources, culling information by date, etc.
- Encouraged scoping and phasing of discovery.
- Inadequate, overly broad search term requests are typically not sufficiently targeted to find relevant documents.

How to Avoid eDiscovery Errors

- Early Case Strategy
- Meet & Confer – Be Prepared
- Deploying a Reasonable and Targeted Discovery Strategy



**MISTAKES
TO
AVOID**

Early Case Strategy

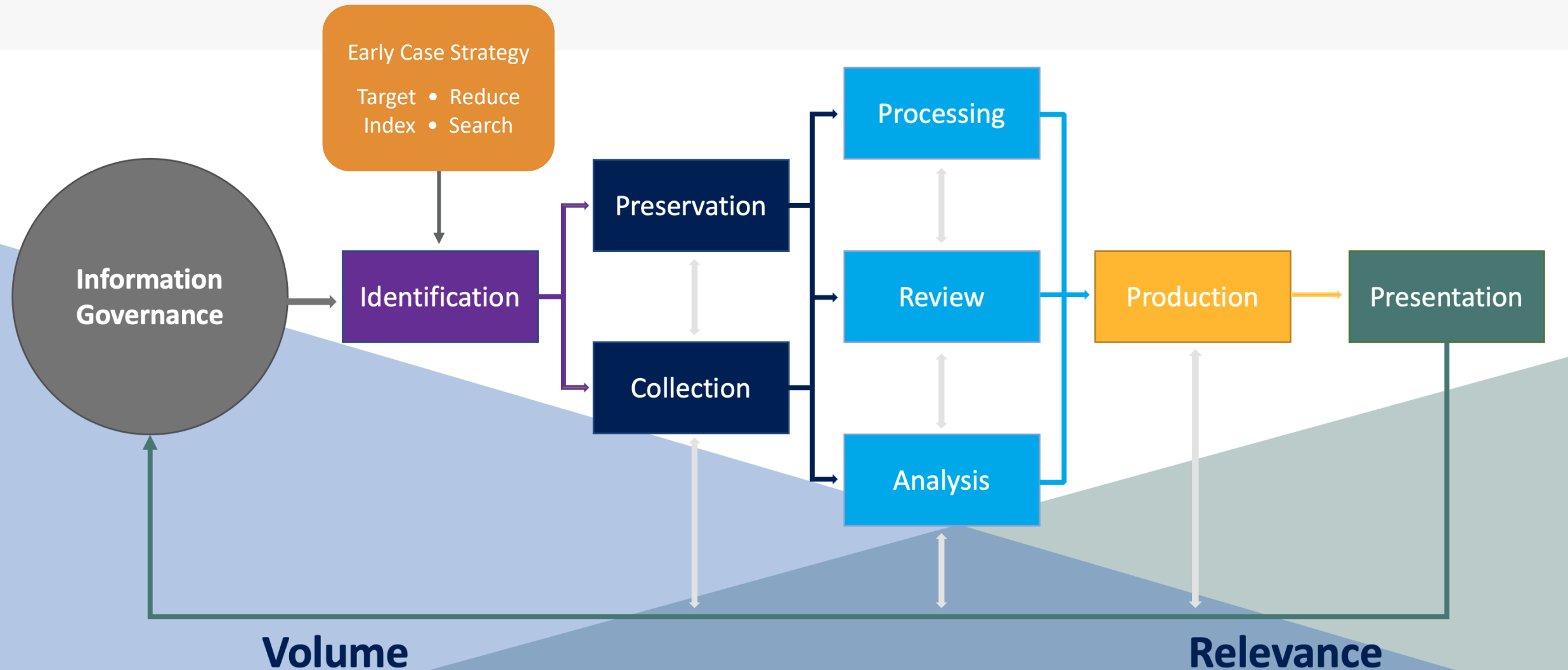
Legal Considerations

- Evaluate fact pattern
- Evaluate discovery scope
 - Custodians
 - Data sources
 - Budget projections analysis versus amount in controversy
 - What story does the data tell?
- Proceed versus settle
- Preservation strategy



Early Case Strategy

Practical Considerations



Interview + Evaluate + Scope



Custodian Priority Ranking

4 - Priority

3 - High

2 - Medium

1 - Low

0 - Released



Data Source Burden and Effort

1 - Low

2 - Medium

3 - High

4 - Burdensome

Not Relevant



Data Source Category with Cost Ranges (\$ - \$\$\$)

Computer

Cell Phone

User Share

Email

Accounting Database



Step 1:

Conduct an assessment interview to rank custodians by priority

Step 2:

Identify and rank data sources based on collection difficulty

Step 3:

Prepare cost estimations to move data from collection through review and production

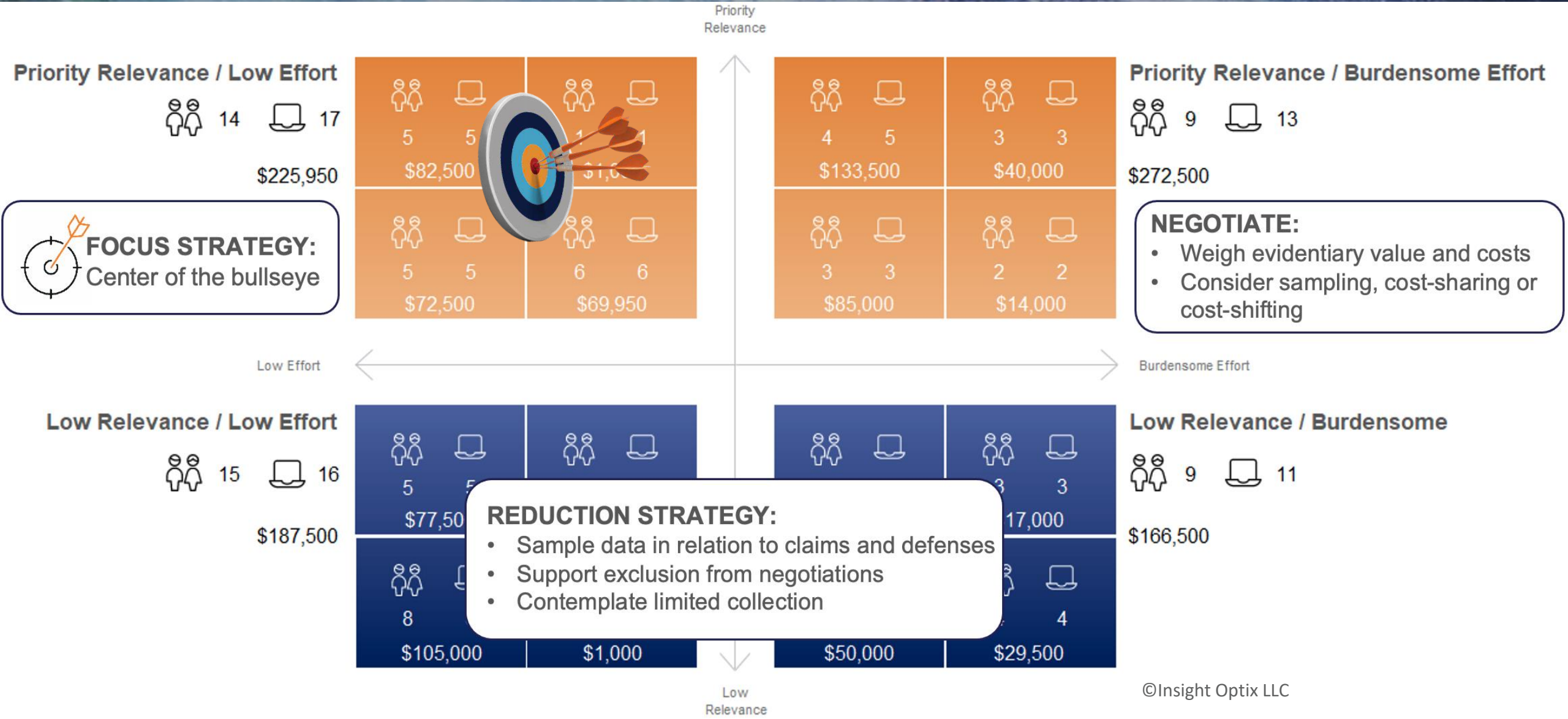
Meet & Confer

Legal Perspective

- Do your homework
- Come prepared
- Show your work
- Don't necessarily negotiate everything up front
- ESI Protocol (can be done in phases)
- Provide documentation to the court to support proportionality disputes



Strategize + Budget



Deploying a Reasonable and Targeted Discovery Strategy

- Search term deployment and negotiation
- Utilize search in place vs. collect everything
- Proactive and targeted collection strategy
- Process should be iterative
- Consistent, repeatable process

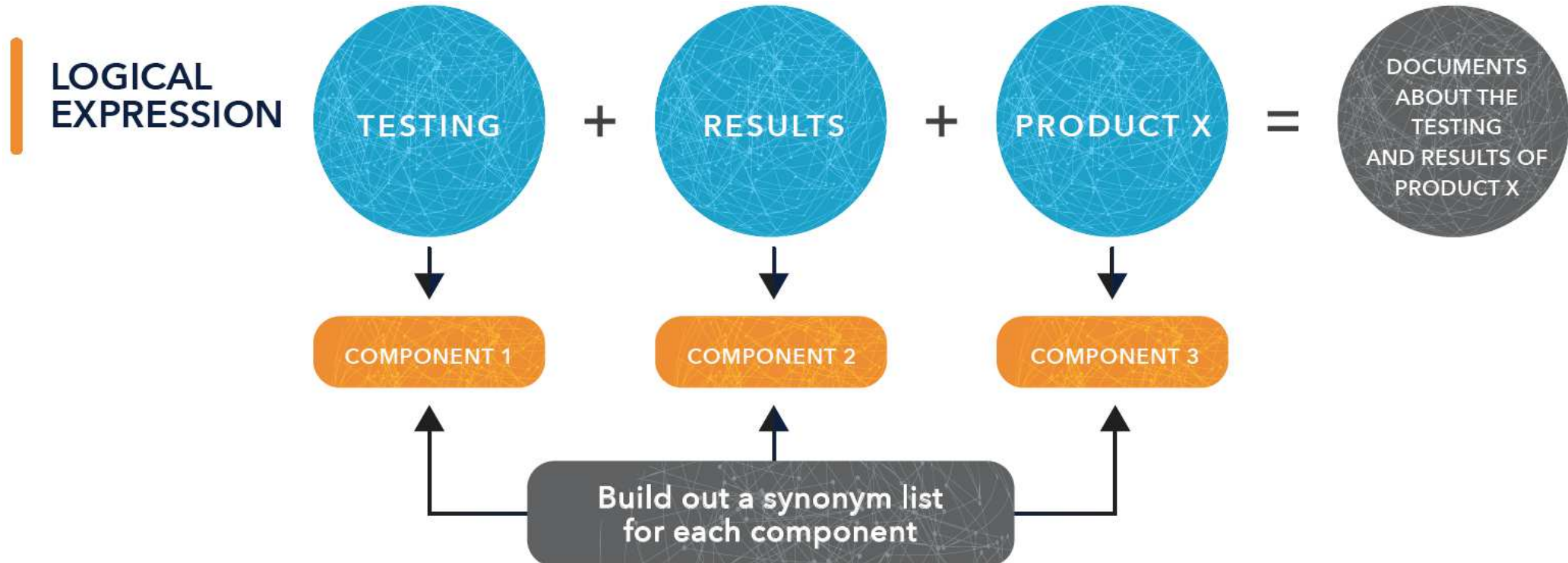


Search Term Optimization

Use cases:

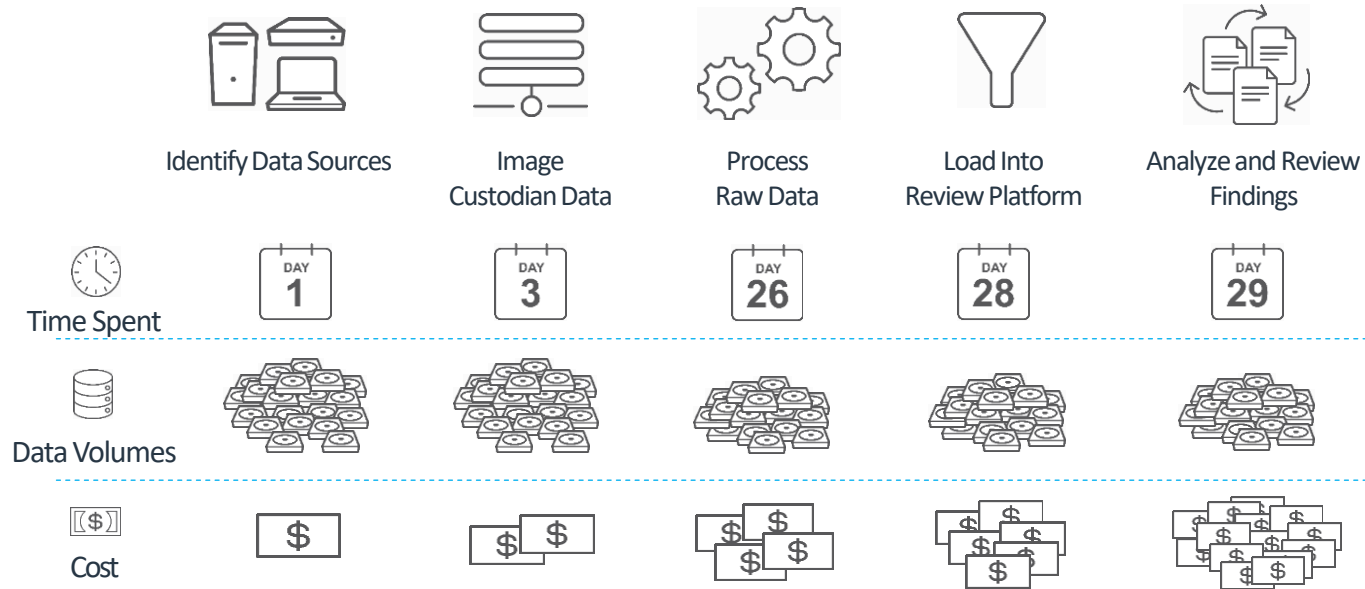
- Search term strategy and negotiation
- Early case assessment
- Data analytics
- Initial disclosures preparation
- Review acceleration
- Incoming production assessment

- Step 1: Issue analysis
- Step 2: Logical expression definition
- Step 3: Component identification and expansion
- Step 4: Search strategies
- Step 5: Defensibility testing

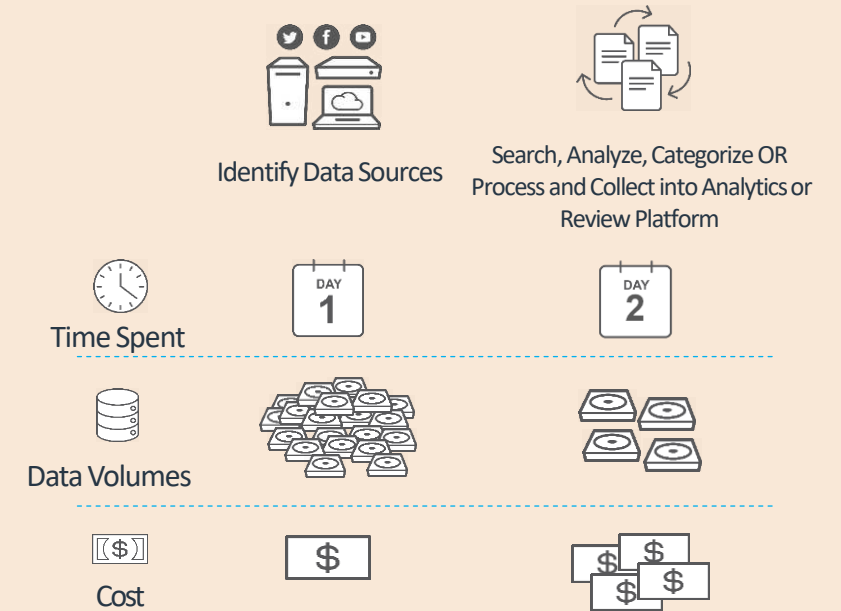


Targeted Collection and Analysis

Traditional Method



Targeted Index-in-Place



Result:
Dramatic cost savings

Key Takeaways to Right-size Discovery

- ✓ **Permission granted!** Utilize the rules to deploy a reasonable discovery strategy.
- 🔄 Discovery is an iterative process – start early.
- 📊 Metrics do not need to be perfect, but they need to be based on attorney decisioning and actionable data points.
- 📈 Calculate the projected discovery spend early to inform strategy and approach.
- 👤 Be thoughtful and creative - collect and produce only what is necessary.



GO LEAN AND SAVE GREEN

Questions?



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