

# Utilizing Cutting-Edge eDiscovery Collection Processes to Achieve Proportionality

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# Our Presenters



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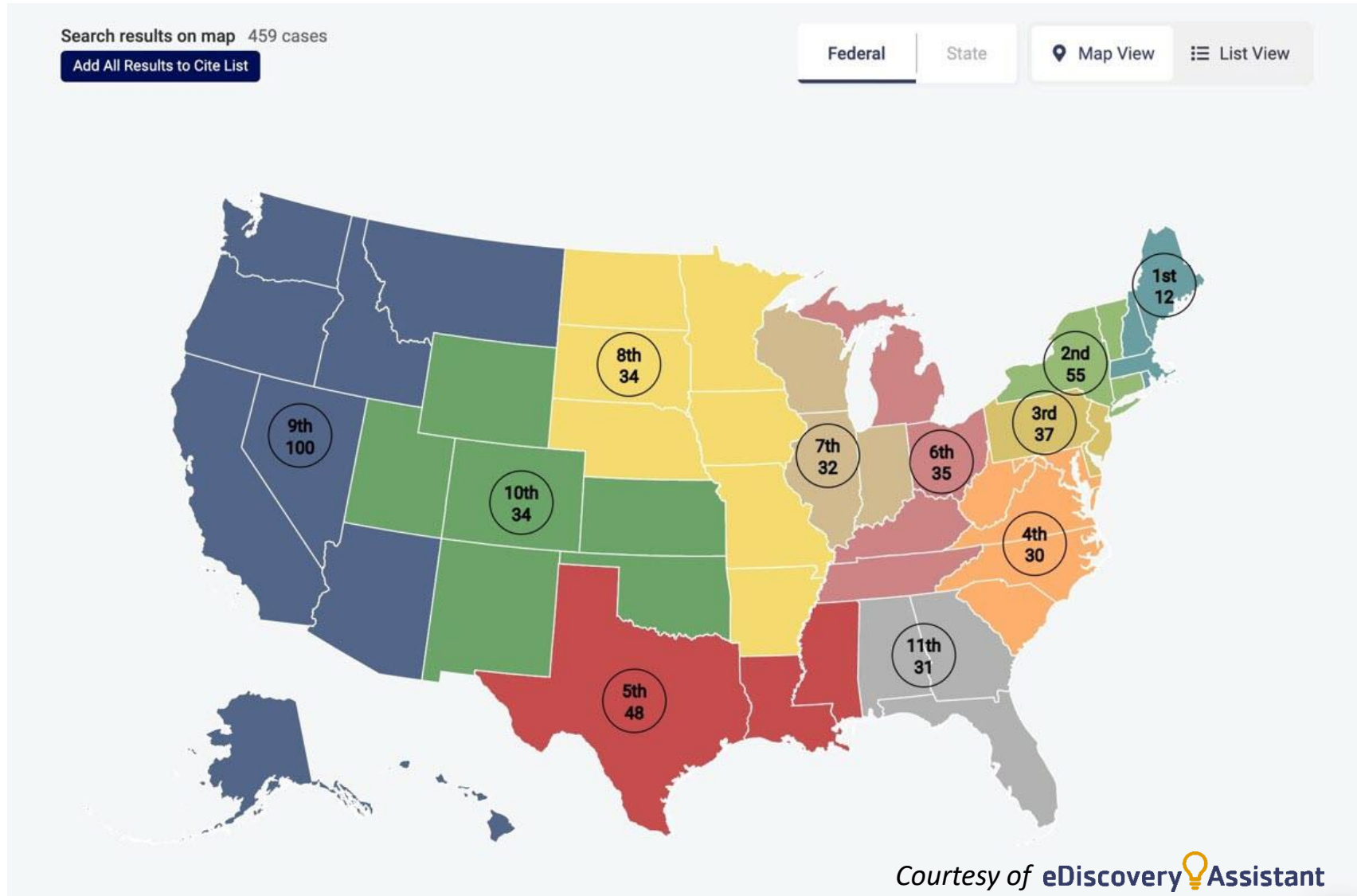


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# Agenda

- eDiscovery Collection Landscape and Challenges
- Legal Considerations for Defensible, Network-enabled Data Collection
- Proportionality and eDiscovery – Case Law Overview
- Proportionality and eDiscovery – Process Overview
- Q&A

# Proportionality Decisions from January 1, 2021 to Date



# Legal Considerations

## 2015 Amendments to the Federal Rules

### Federal Rule of Civil Procedure 26(b)

The 2015 amendments to Fed. R. Civ. P. 26(b) were designed to make e-discovery in matter more proportional to the case itself by establishing a six-pronged test for proportionality. The language of the rule:

#### Rule 26. Duty to Disclose; General Provisions Governing Discovery

(b) DISCOVERY SCOPE AND LIMITS.

(1) *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 importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and 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



# Legal Considerations – Case Law

- **Deipenhorst v. City of Battle Creek**, No. 1:05-CV-734 (W.D. Mich. June 30, 2006) “Imaging a hard drive results in the production of massive amounts of irrelevant, and perhaps privileged, information.”
- **McMaster v. Kohl’s Dep’t Stores, Inc.**, No. 18-13875 (E.D. Mich. July 24, 2020). A search term dispute results in a court order that the parties share the cost of an expert to assist them. Court favors use of search terms and other parameters for data culling.
- **Lawson v. Spirit AeroSystems, Inc.**, No. 6:18-cv-01188 (D. Kan. Oct. 29, 2020). How much e-discovery—in this case, technology-assisted review (TAR)—should a party be allowed to demand? Additionally, court notes that “Bloated ESI Collection” leads to extensive costs and inefficient TAR process.

# Legal Considerations – Case Law

- **Ramos v. Hopele of Ft. Lauderdale, LLC**, 2018 WL 1383188, at \*3 (S.D. Fla. Mar. 19, 2018); When determining whether to grant a motion to compel the forensic imaging of a cell phone or other electronic device, courts have considered whether the examination will reveal information that is relevant to the claims and defenses in the pending matter and whether such an examination is proportional to the needs of the case given the cell phone owner's compelling privacy interest in the contents of his or her cell phone.
- **John Crane Grp. Corp. v. Energy Devices of Texas, Inc.**, CIVIL ACTION NO. 6:14-CV-178, 2015 WL 11089486, at \*3 (E.D. Tex. Feb. 2, 2015) (denying the plaintiff's motion to compel forensic imaging of computer hard drives and granting the defendant's motion for a protective order because of the inherent privacy concerns).

# Disrupting Discovery – 2021 Edition

## The George Washington University Complex Litigation Center: Proportionality Guidelines

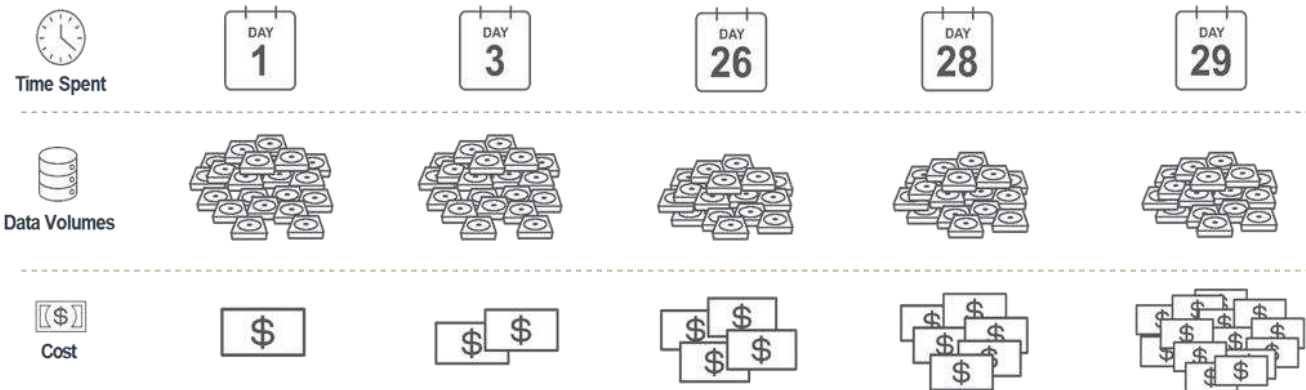
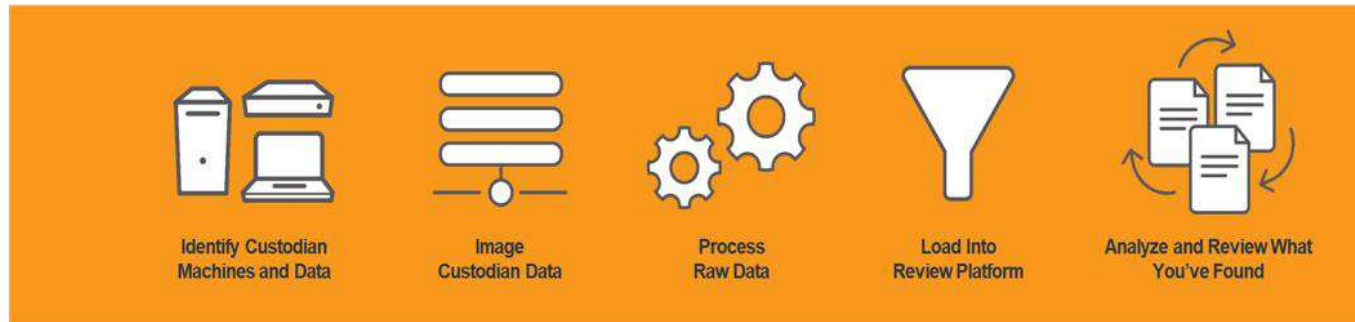
- Creating a framework to operationalize proportionality using identifiable and defensible metrics
- Drafting team and steering committee members include judiciary, practitioners, in-house corporate legal staff, and eDiscovery veterans
- Four sub-committees
  - Relevancy Factors
  - Data Source Burden and Effort
  - Discovery Cost Projections
  - Negotiation and Use Cases in Discovery
- Conference was held at the end of March with over 250 registrants, with participation from 55 judges.



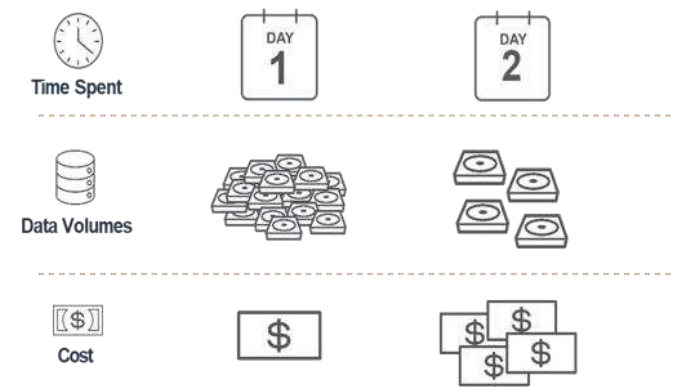
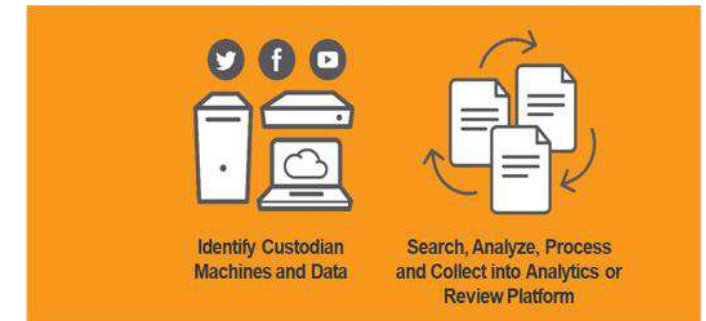


# Streamlining the Traditional Collection Process

## Traditional Approach



## Applying Remote Collection and Proportionality



# Demonstration

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# Questions

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