



CONSTRUCTION **SUPER**CONFERENCE

2025

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CSI: Construction Site Intel – Tracking Down ESI Without Blowing the Budget



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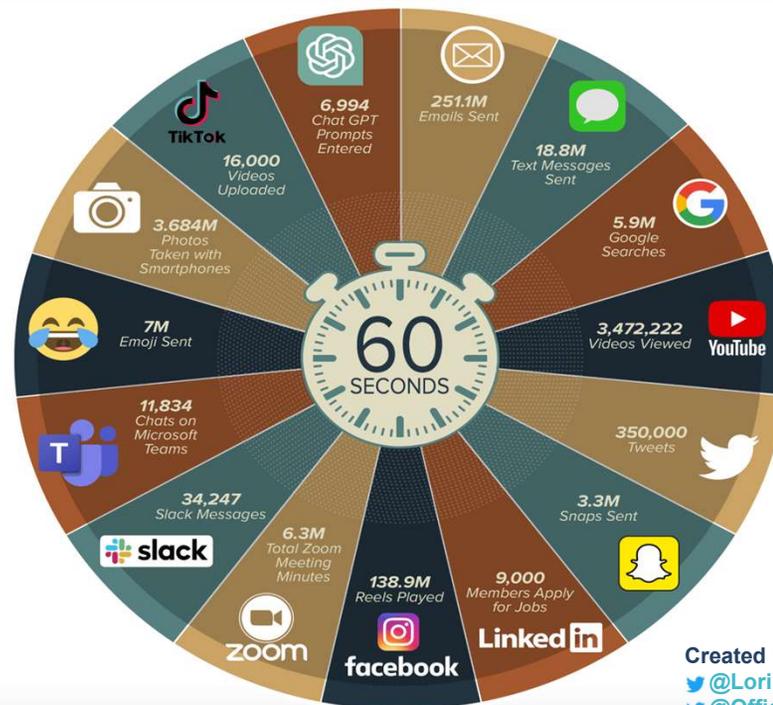


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2024 This is what happens in an INTERNET MINUTE

251.1 Million *Emails Sent*

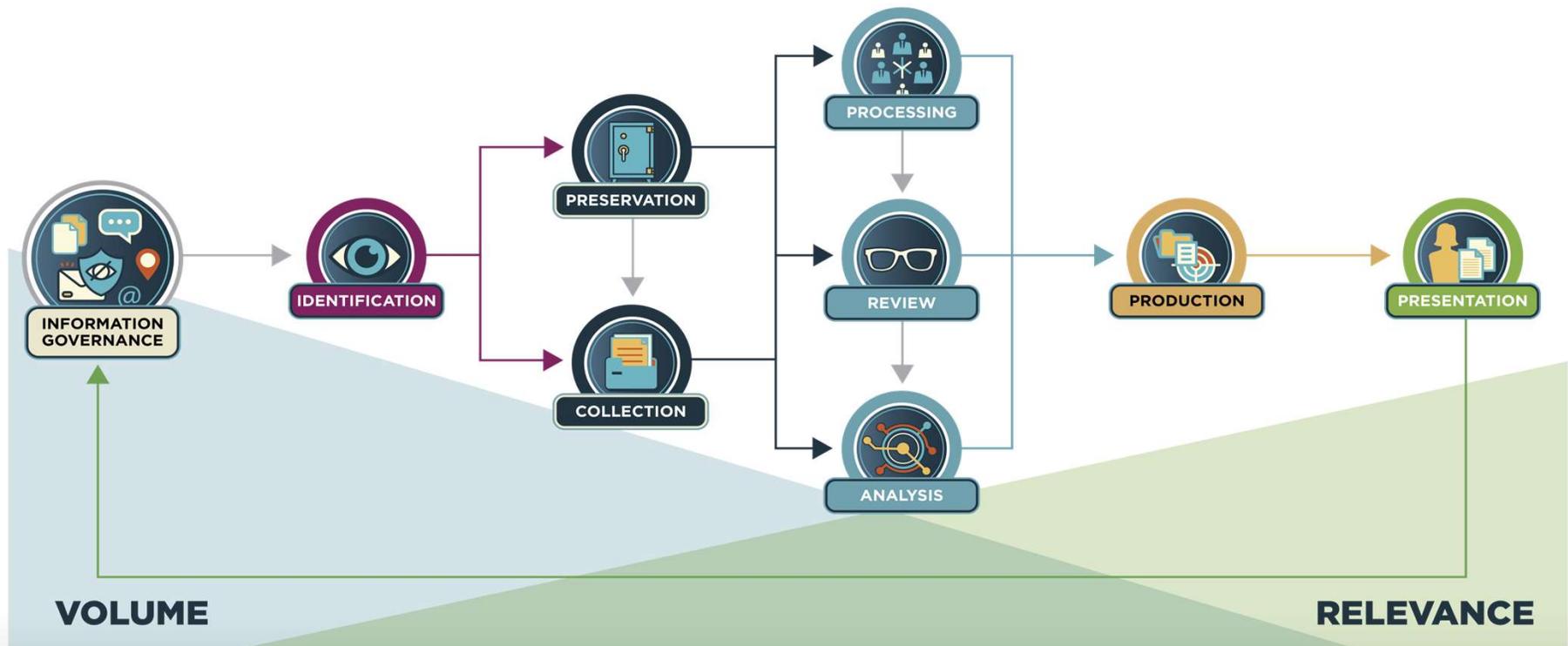
18.8 Million *Texts Sent*



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EDRM – Electronic Discovery Reference Model



MODERN CONSTRUCTION DATA SOURCES



Communications

- Emails
- Instant Messages
- Text Messages
- WhatsApp
- Slack
- Gchat
- Teams



Misc

- Diaries
- Meeting Recordings



Project Server

- Network Server
- Box.com
- ProCore
- Newforma
- SmartApp
- BlueBeam
- BIM360
- Aconex



Local Drives

- Personal drives
- Laptops
- Department specific drives



Paper

- Printouts
- Boxes

Office 365 Email Limitations & Best Practices:

- **X Do not have IT run keywords before export**
- **Do have IT apply a date cut only**

Let's Talk Proportionality

FRCP 26(b)(1) Scope of discovery must now be "relevant to parties' claim or defense and **proportional** to the needs of the case considering:

- importance of issues at stake
- amount in controversy
- parties' relative access to relevant info
- parties' resources
- importance of discovery to resolving the issues; and
- whether burden or expense of proposed discovery outweighs its benefit

Advisory Committee notes:

Gone is the "reasonably calculated to lead to the discovery of admissible evidence" language because it has been used "incorrectly, to define the scope of discovery."

"As the Committee Note to the 2000 amendments observed, use of the 'reasonably calculated' phrase to define the scope of discovery 'might swallow any other limitation on the scope of discovery.'"

Let's Talk Proportionality (cont.)

AAA Construction Arbitration Rule R-24. Pre-Hearing Exchange and Production Information

(a): Authority of arbitrator: The arbitrator shall manage any necessary exchange of information among the parties with a view to achieving an efficient and economical resolution of the dispute...

(b): Documents: The arbitrator may, on application of a party or on the arbitrator's own initiative:

iv. require the parties, when documents to be exchanged or produced are maintained in electronic form, to make such documents available in the form most convenient and economical for the party in possession of such documents

AAA Construction Arbitration Rule R-25. Enforcement Powers of the Arbitrator

The arbitrator shall have the authority to issue any orders necessary to enforce the provisions of rules...and to otherwise achieve a fair, efficient and economical resolution of the case, including, without limitation

(b) imposing reasonable search parameters for electronic and other documents if the parties are unable to agree;

(c) allocating costs of producing documentation, including electronically stored documentation;

Let's Talk Proportionality (cont.)

American Arbitration Association E-Discovery Considerations for Construction Arbitrations

Statement of Intent:

The purpose of this document is to highlight for arbitrators and parties the need to actively manage the e-discovery process from the outset of the proceeding to achieve the sometimes competing goals of fair, efficient, and economical dispute resolution (CIAR R-23(b)) and safeguarding each party's opportunity to fairly present its claims and defenses (id. R-24(a)). All arbitration participants should be committed to an e-discovery process that is fair and transparent, allows discovery of relevant and material electronically stored information ("ESI") commensurate with the size and scope of the case, and consistent with the hallmark benefit of arbitration: efficient and cost-effective dispute resolution.

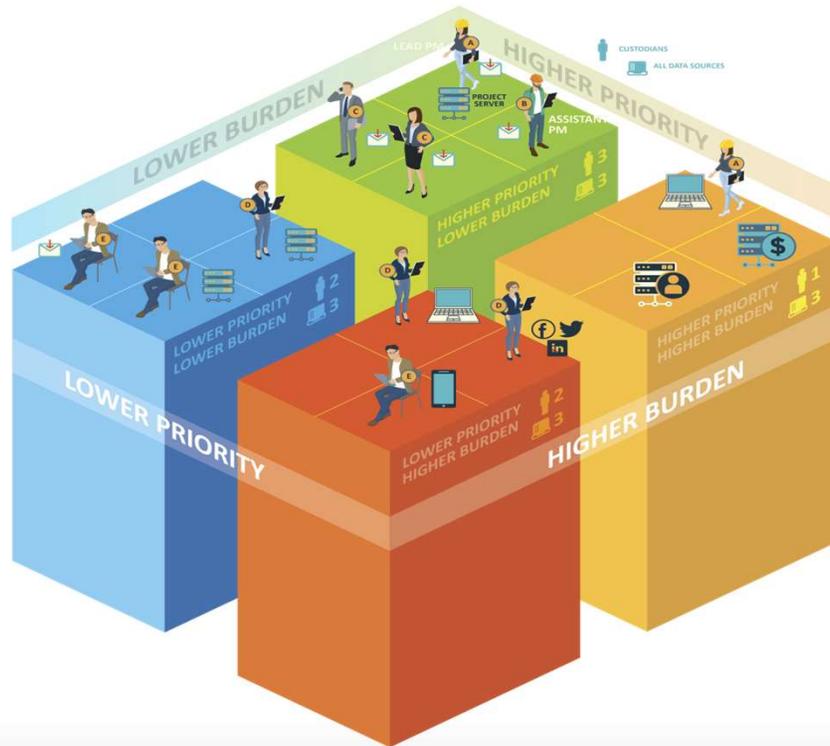
Core Principles:

- Relevance
- Materiality
- Proportionality

Cost of eDiscovery:
Use Protocol to Prioritize Data Collection and Production

Not All Data is Equally Relevant

	EMAIL
	COMPUTER
	ACCOUNTING DATABASE
	PERSONNEL DATABASE
	USER SHARE
	SOCIAL MEDIA
	MOBILE DEVICE



Cost of eDiscovery:
Use Protocol to Limit Scope and Costs

GW Discovery Proportionality Model - Judicial Detail Review

STAGE	Hosted email (5GB)	File Share (4.5GB)	Computer/ Laptop (30GB)	Mobile Device (8GB)	STAGE TOTAL
GB Collected	5.0	4.5	30	8	69.75
GB Produced	0.44	0.11	0.79	0.21	1.59
Collection	750.00	1,150.00	600.00	750.00	3,750.00
Pre-Processing	450.00	1,200.00	600.00	600.00	4,650.00
Processing	436.54	108.31	1,195.49	164.08	1,925.61
Hosting	827.33	514.14	1,166.16	612.95	3,565.79
Review	29,500.20	6,076.01	42,804.80	19,524.30	102,160.61
Production	233.89	171.23	301.67	191.00	1,055.23
Management/Support	1,295.53	1,295.53	1,295.53	1,295.53	6,477.64
DATA SOURCE TOTAL	\$33,493.48	\$10,515.21	\$47,963.65	\$23,137.85	\$123,584.87

ESI PROTOCOL: YOUR FIRST AND GREATEST
OPPORTUNITY TO DEFINE SCOPE & PROTECT THE COMPANY



Limitations on Scope



How Documents Will be Identified for Production



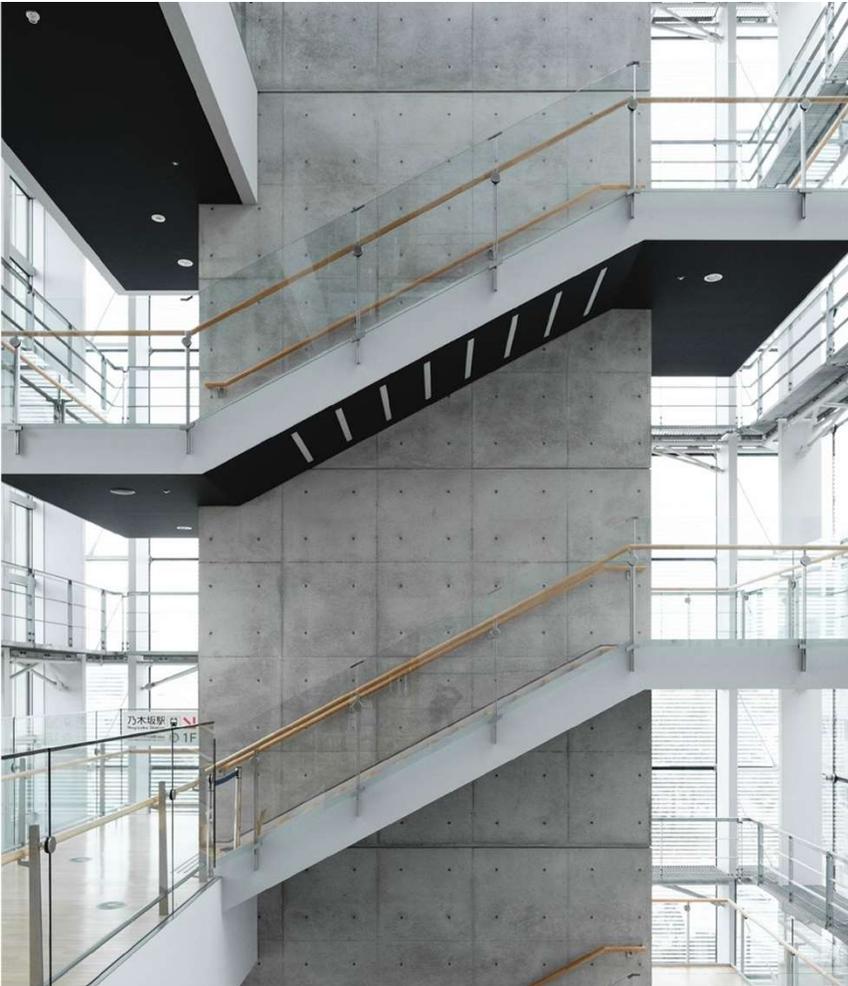
Production Format



Privilege & Confidentiality

Things to Include in an ESI Protocol

- Definition of terms
- Agreements on what data will be preserved—and what data won't be preserved
- Temporal scope
- Custodians and data sources
- Transparency in the use of search terms—or TAR, or a combination
- Right to review for responsiveness and privilege
- Mechanics of filtering
 - De-NISTing
 - Deduplication
 - Threading
 - Exception files
 - For TAR, methodology, process, system training and validation
- Form of production—with specifications for the load file
- File types to be produced natively
- Confidentiality designations (if needed)
- Privilege log form and structure; and
- FRE 502(d) privilege clawback (if not in another document signed by the court)

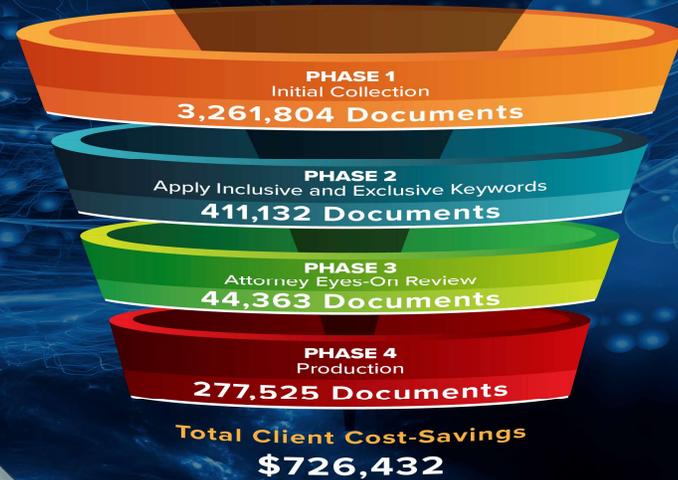


STICKING TO THE BUDGET: Strategies for Review

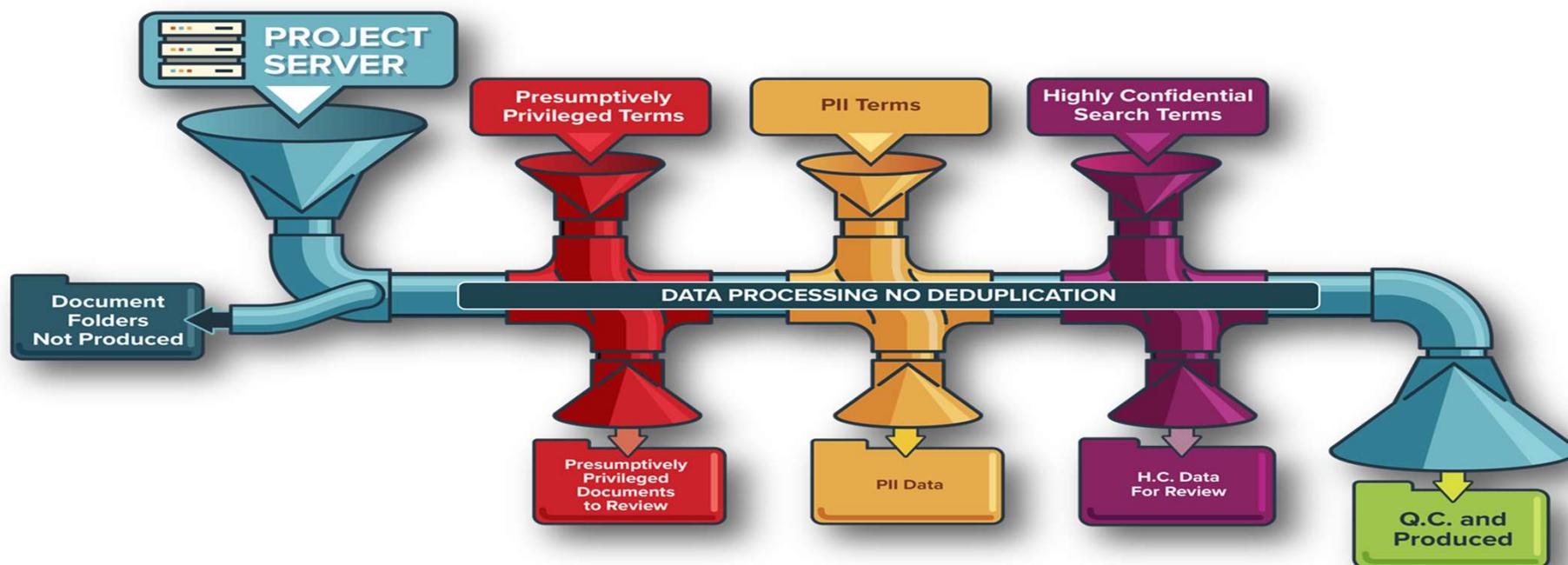
1. What Can Go Straight to Production
2. High Priority Review
3. Review for production vs Review for issues/depo prep

EXCLUSIONS + MACHINE LEARNING = COST SAVINGS

DOCUMENT REDUCTION FUNNEL



Project Server Pipeline



Selective Archiving

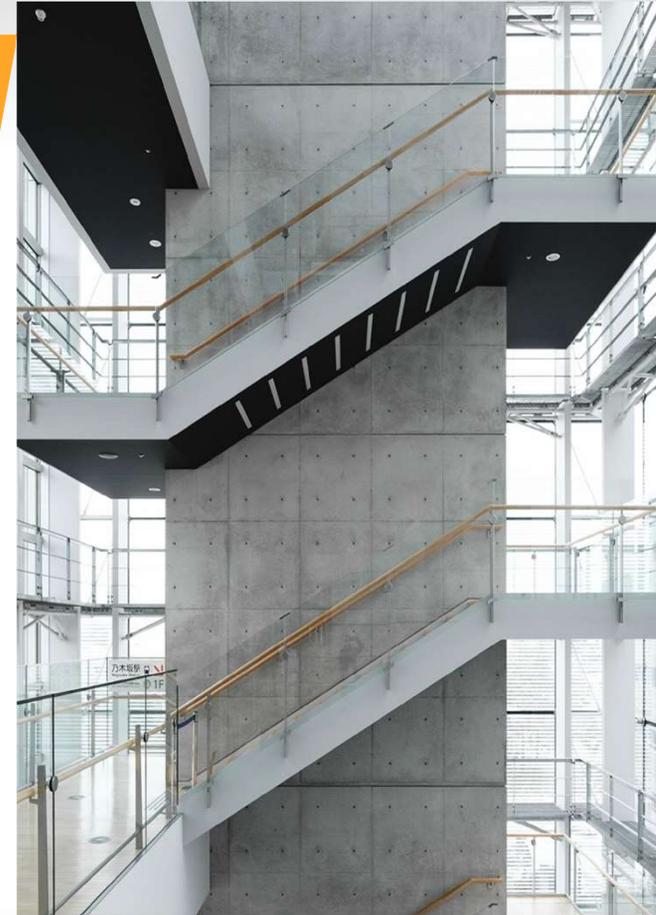
Keep Hosting Costs Down & Focus On What You Need

Ensure all work product remains intact and can be brought back online quickly

Examples:

Archive project files produced while counsel focuses on email review/production = reduction in monthly hosting costs

Continuous archiving as scope narrows through the arbitration = cost savings





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Thank You!!

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