



SIPRESS

# Association of Corporate Counsel

## Preservations Strategies to Address the Advent of New Technologies

July 19, 2020

# Agenda

- **Introduction**
- **Technical background to newer communication technologies**
- **Background legal rules and standards**
- **Application of legal rules and standards to new technologies**
- **Practical challenges for e-discovery of new technologies**
  - Preservation
  - Collection
  - Review
  - Production
- **Checklist for success**

# The Problem

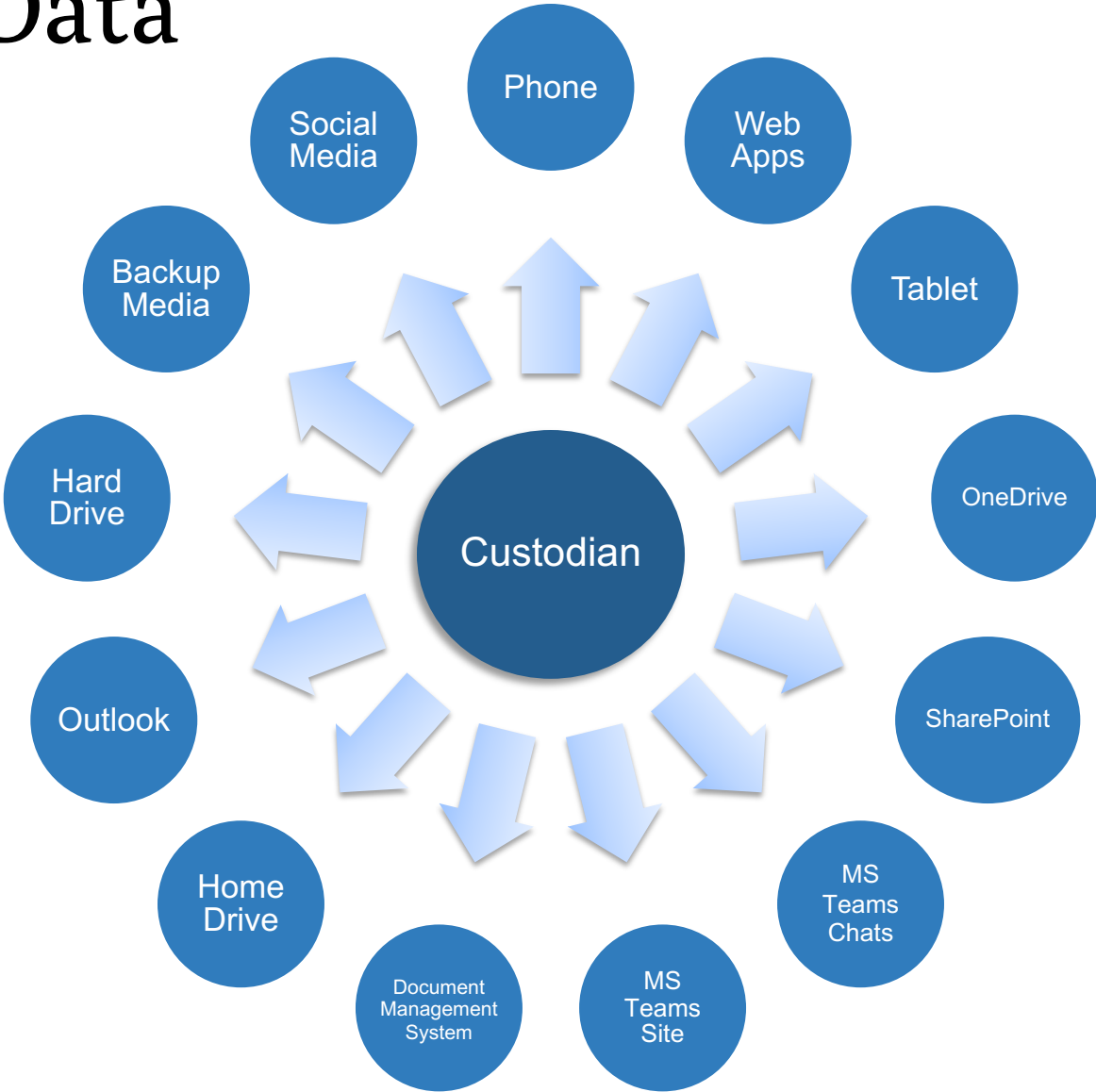
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Today



# Custodial Data

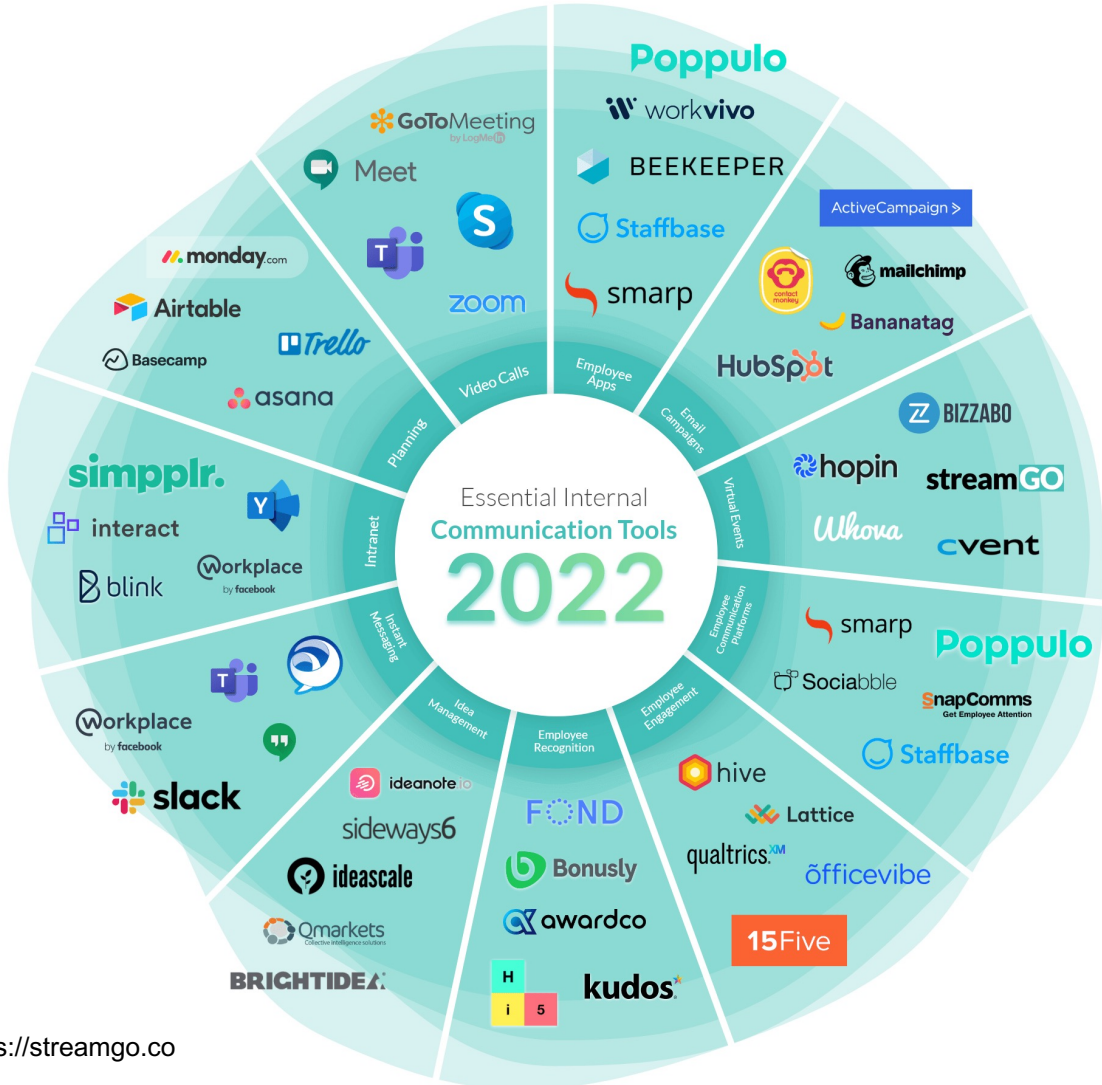


# GW Proportionality Model Paper

GW Discovery Proportionality Model Judicial Detail View						
STAGE	Hosted email (5GB)	File Share (4.5GB)	Social Media/ Website (0.25 GB)	Computer/ Laptop (30 GB)	Mobile Device (8 GB)	STAGE TOTAL
GB Collected	5.0	4.5	0.25	30	30	69.75
GB Produced	0.44	0.11	0.04	0.79	0.21	1.59
Collection	750.00	1,150.00	500.00	600.00	750.00	3,750.00
Pre-Processing	450.00	1,200.00	1,800.00	600.00	600.00	4,650.00
Processing	436.54	108.31	21.19	1,195.49	164.08	1,925.61
Hosting	827.33	514.14	445.21	1,166.16	612.95	3,565.79
Review	29,500.20	6,076.01	4,255.31	42,804.80	19,524.30	102,160.61
Production	233.89	171.23	157.44	301.67	191.00	1,055.23
Management/Support	1,295.53	1,295.53	1,295.53	1,295.53	1,295.53	6,477.64
<b>DATA SOURCE TOTAL:</b>	<b>\$ 33,493.48</b>	<b>\$ 10,515.21</b>	<b>\$ 8,474.67</b>	<b>\$ 47,963.65</b>	<b>\$ 23,137.85</b>	<b>\$ 123,584.87</b>

**We believe these numbers are not accurate and actual volumes/costs are larger**

# And It Is Only Getting More Complicated!

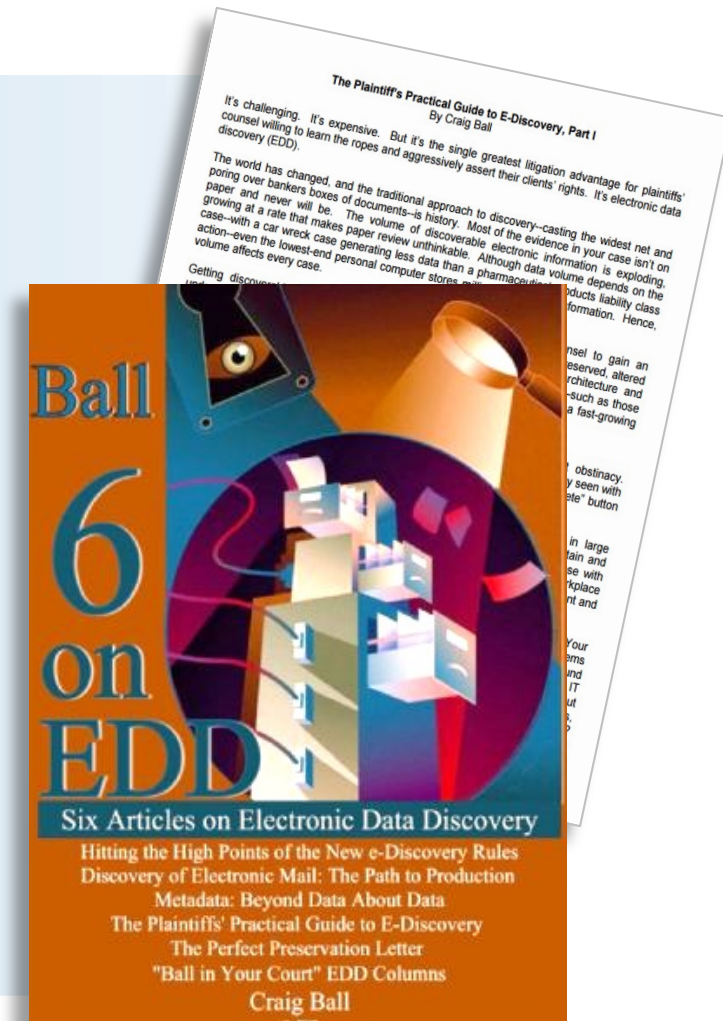


Source : <https://streamgo.co>

# *The Plaintiff's Practical Guide to E-Discovery*

by Craig Ball

- **Electronic Discovery is “the single greatest litigation advantage for plaintiffs’ counsel willing to learn the ropes and aggressively assert their clients’ rights.”**
- **“Your opponent may be a courtroom whiz, but if he or she has a tenuous grasp of computer systems or doesn’t understand his or her client’s devices and data, defense counsel can’t give sound guidance about preserving digital evidence or pose the right questions to knowledgeable IT personnel.”**
  - Create the perception that the defendant is spoliating ESI because it’s hiding something
  - Increase costs for the defendant
  - Create a side-show that takes focus away from the merits of the case

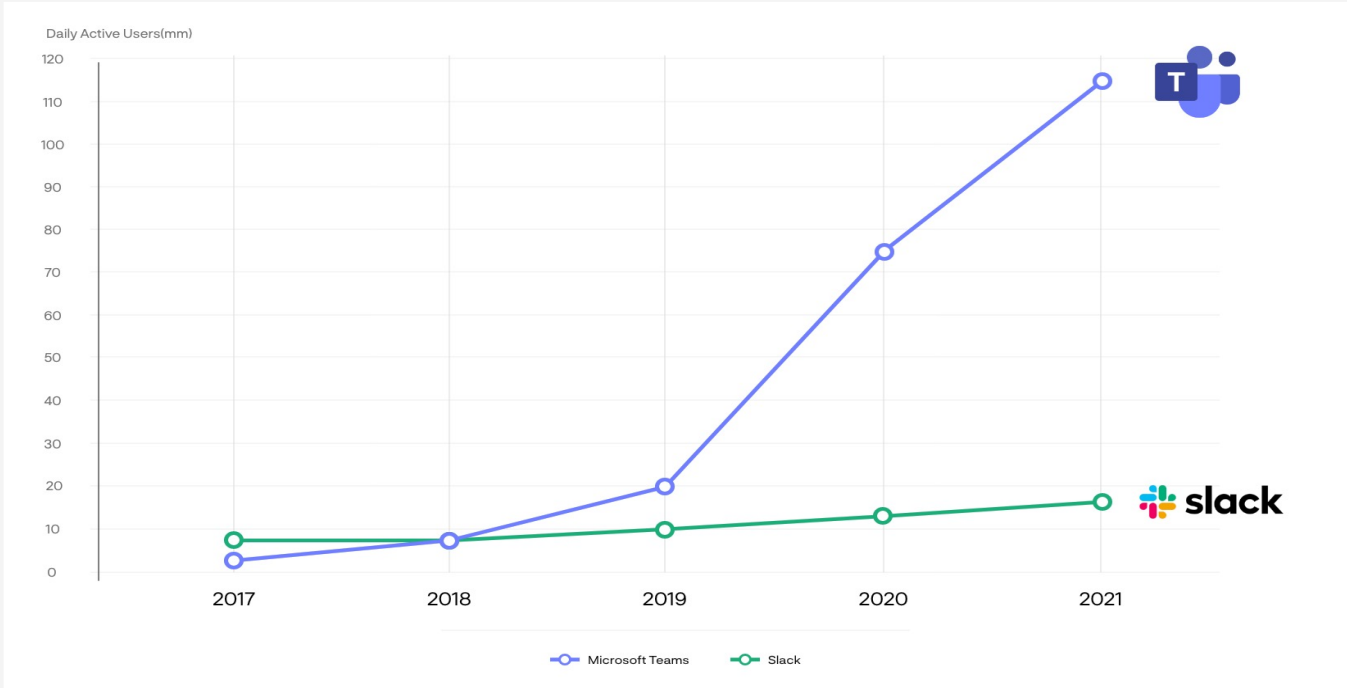




# Newer Data Types

# The Rise of Collaboration Platforms

Microsoft Teams vs Slack: Daily active users



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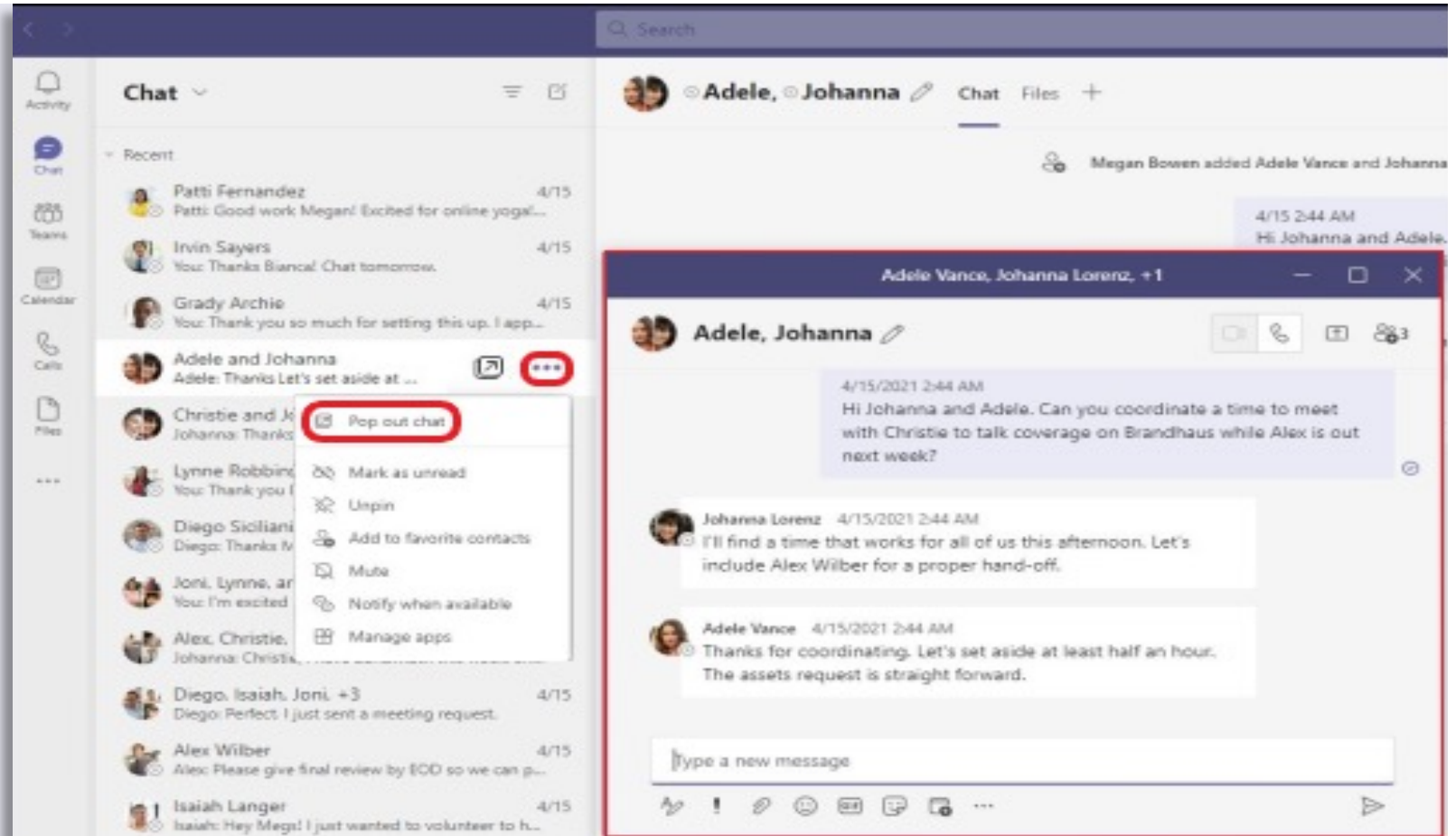
# Collaboration Platforms

“And while that’s a great idea for encouraging collaboration, building teamwork, and creating a reservoir of institutional knowledge, it has terrifying potential ramifications for ediscovery, risk management, and information governance. Keeping all that data and chatter—the relevant and the irrelevant, the timeless and the passing fancy, the project-oriented and the social—opens up a whole world of potential risks related to privacy, confidentiality, and ediscovery.”

*J. Murphy, Managing Ediscovery and Compliance Needs  
Within the Hottest Collaboration Platform (2019)*

# MS Teams

- Chats
- File Storage
- Attachments
- Applications





# Teams Content

- **Teams 1:1 chats.** Chat messages, posts, and attachments shared in a Teams conversation between two people. Teams 1:1 chats are also called conversations.
- **Teams group chats.** Chat messages, posts, and attachments shared in a Teams conversation between three or more people. Also called 1:N chats or group conversations.
- **Teams channels.** Chat messages, posts, replies, and attachments shared in a Teams channel.
- **Private Teams channels.** Message posts, replies, and attachments shared in a private Teams channel.

# Slack Communications

## Channel

A Slack channel is a persistent chat room organized by project, team, topic or location. Users who join a channel have access to all of the information that the other members have access to. All information in a channel becomes searchable immediately upon creation and remains accessible to all channel members until the channel is archived or deleted.

## Groups

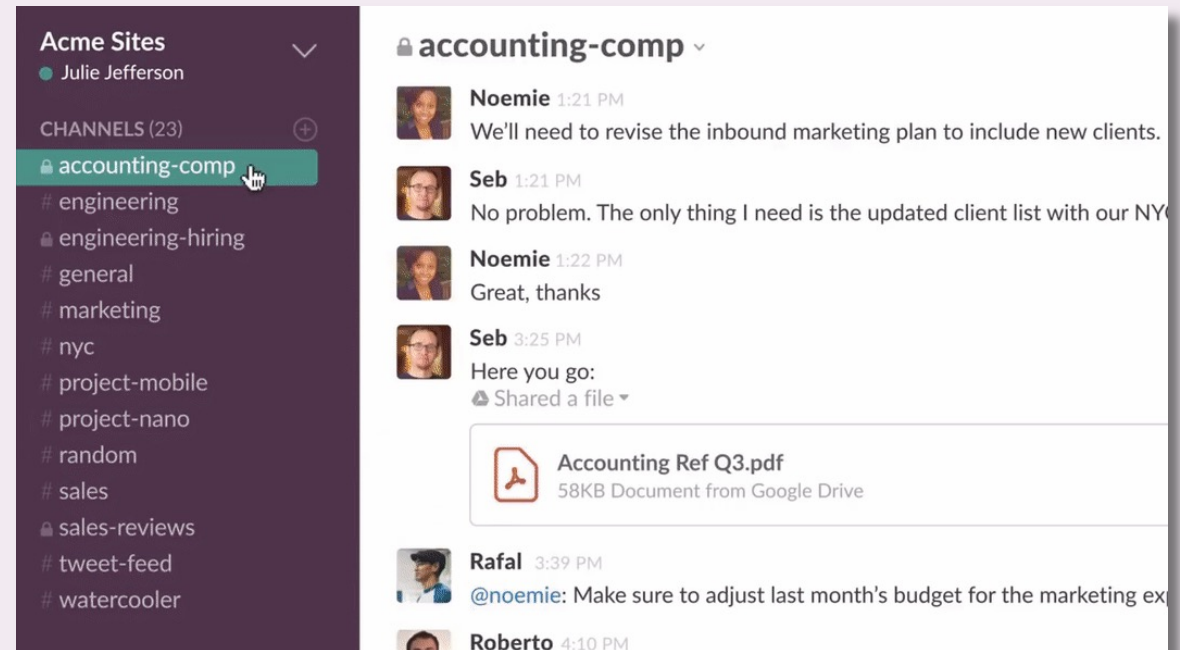
A Slack group is a small group of workspace users who need to communicate and collaborate with regard to a particular topic. Groups are similar to another type of communication, the Multi-Party Instant Message (MPIM). However, unlike MPIM's, groups are given names which can be used within channels to notify all members of the group, like a distribution list. For example, if a channel member wishes to notify all members of a group called "security" of a hazardous condition, she can simply mention @security in a channel message.

## Direct Message

Direct Message (DM) communications are private conversations between two members of a Slack workspace.

## Multi-Party Instant Message

A Multi-party Instant Message (MPIM) is private direct message conversation between three or more members of the Slack workspace. MPIM's can be converted to groups at any time.



# Ephemeral Communications

## What is it?

- **Data that only last for a short time. In the context of electronic communications, messages disappear once accessed/read (or soon thereafter).**

## How Does It work?

- **Employs encryption or the process of converting data into an unreadable form:**
  - Messages are generated, sent and received using the app.
  - Once opened, messages often go away, although what's there (and for how long) is determined by the software company's retention policies.

# Ephemeral Communications

								
	Status	Telegram	Signal	Whatsapp	WeChat	Line	KakaoTalk	Messenger
Leverages P2P Protocols	✓	✗	✗	✗	✗	✗	✗	✗
E2E encryption by default	✓	✗	✓	✓	✗	✓	✗	✗
App & Server Completely Open source	✓	✗	✓	✗	✗	✗	✗	✗
No phone number or email required	✓	✗	✗	✗	✗	✗	✗	✗
Perfect forward secrecy	✓	✓	✓	✓	✗	✗	✗	✓

**Privacy Features of Status In Comparison – 24. 04. 2020**

\* This is a comparison of features implemented in Status. We understand there are privacy features not available in Status – Check the full story on <https://our.status.im/elements-of-private-secure-messaging-apps>



# Virtual Meeting Platforms

**“Virtual meeting software is applications and other digital platforms that let you bring people together over the internet. Usually, these apps include a form of video conferencing, as well as tools like chat, reactions and screen sharing. Examples include Zoom, Webex, Google Meet, Lifesize and Jami.”**

<https://teambuilding.com/blog/virtual-meeting-software#:~:text=Virtual%20meeting%20software%20comprises%20applications%20and%20digital%20platforms,building%20activities%2C%20games%2C%20or%20events%20for%20remote%20teams.>



- Recording
- Chats
- Sharing documents
- Sharing links

# Legal Framework

# The Duty to Preserve

- **Preservation** – The duty to identify, locate, maintain and protect relevant, potentially discoverable evidence
- **Source of Duty**
  - Professional Rule 3.4, Fairness to Opposing Party and Counsel
  - Inherent Powers of the Court
  - Common Law
  - Federal Rules of Civil Procedure (Rule 37 & 26(g))
  - Statutory and Regulatory Obligations

# The Duty to Preserve

## Litigation Hold “Trigger”

- ***Pending Litigation*** (Investigation or Other Legal Proceeding)
  - Duty arises upon formal or informal notice of the legal matter and that corporate records are potentially relevant
  - Notice = Complaint, Service of Process, or Subpoena
- ***Threat of Future Litigation*** (Investigation or Other Legal Proceeding)
  - Must be a concrete and identifiable threat
  - Duty arises upon formal or informal notice of the future legal matter and that corporate records are potentially relevant
  - Notice = Demand Letter or Press Release
  - Beware of Reference to Preservation Obligations in Demand Letter (important to make written response)

# The Sedona Conference –Legal Holds



- The nature and specificity of the complaint or threat;
- The party making the claim;
- The position of the party making the claim;
- The business relationship between the accused and accusing parties;
- Whether the threat is direct, implied or inferred;
- Whether the party making the claim is known to be aggressive or litigious;
- Whether a party who could assert a claim is aware of the claim;

- The strength, scope, or value of a potential claim;
- The likelihood that data relating to a claim will be lost or destroyed;
- The significance of the data to the known or reasonably anticipated issues;
- Whether the company has learned of similar claims;
- The experience of the industry;
- Whether the relevant records are being retained for some other reason; and
- Press and or industry coverage of the issue either directly pertaining to the client, or of complaints brought against someone similarly situated in the industry.

# Relevance - Proposed Rule 26(b)(1)



## (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.

~~For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.~~

# Relevance – Newer Data Types

## Slack

- ***Laub v. Horbaczewski*, 2020 WL 7978227 (C.D. Cal. Nov. 17, 2020)** (finding that the plaintiffs credibly argued that certain private Slack messages may be relevant because the messages would show evidence of the underlying contract violation claims, but concluding that the defendant did not have “possession, custody, or control” over the private Slack channels under the free version and standard version of Slack);
- ***Milbeck v. TrueCar, Inc.*, 2019 U.S. Dist. LEXIS 165649 (C.D. Cal. May 2, 2019)** (finding that Slack messages were relevant to the plaintiff’s claim and were significant to the resolution of the case);
- ***Benebone LLC v. Pet Qwerks, Inc.*, 2021 WL 831025 (C.D. Cal. Feb. 18, 2021)** (finding that Slack messages were relevant because the plaintiff used Slack for part of its internal business communications).

## Teams

- ***Franklin v. Howard Brown Health Ctr.*, No. 1:17 C 8376, 2018 WL 4784668 (N.D. Ill. Oct. 4, 2018)**; report and recommendation adopted, 2018 WL 5831995 (N.D. Ill. Nov. 7, 2018) (imposing sanctions on defendant for failing to preserve relevant messages from its instant messaging system (MS Lync) where defendant configured the system to keep messages for up to two years)
- ***Charter Communications Operating v. Optimize*, 2021 WL 1811627 (Del. Chanc. Ct. Jan. 4, 2021)** (referencing Court’s prior order compelling production of native copies of Microsoft Teams messages)

## Ephemeral

- ***Waymo LLC v. Uber Tech., Inc.*, No. C 17-00939 WHA, 2018 WL 646701 (Jan. 30, 2018)** (holding that plaintiff could present evidence and argument to the jury regarding defendant’s use of “ephemeral messaging” to eliminate relevant evidence).
- ***Herzig v. Arkansas Foundation for Medical Care, Inc.*, No. 2:18-CV-02101, 2019 WL 2870106 (W.D. Ark. July 3, 2019)** (plaintiffs acted in bad faith because they intentionally hid their communications from the defendant)
- ***WeRide Corp. v. Kun Huang*, No. 5:18-cv-07233, 2020 WL 1967209 (N.D. Cal. Apr. 24, 2020)** (criticizing defendants and imposing terminating sanctions for, among other things, implementing an enterprise grade ephemeral messaging application to conceal relevant communications from discovery)

# Proportionality Concept Applies to Preservation

“Because the rule calls only for reasonable steps to preserve, it is inapplicable when the loss of information occurs despite the party’s reasonable steps to preserve.” [Rule 37\(e\) Comments.](#)

“Another factor in evaluating the reasonableness of preservation efforts is proportionality. The court should be sensitive to party resources; aggressive preservation efforts can be extremely costly, and parties (including governmental parties) may have limited staff and resources to devote to those efforts.” [Rule 37\(e\) Comment](#)



# Proportional Under Rule 26

- ***Laub v. Horbaczewski*, 2020 WL 7978227, at \*11–13 (C.D. Cal. Nov. 17, 2020)** (finding that the production of the Slack Data at issue was not proportional to the needs of the case because it was not in the producing party’s possession, custody, or control, and that the evidence was cumulative).
- ***Milbeck v. TrueCar, Inc.*, 2019 U.S. Dist. LEXIS 165649, at \*4–9 (C.D. Cal. May 2, 2019)** (finding that the defendants’ burden to produce was too great because the discovery time line and trial schedule were compressed, the defendants’ e-discovery provider stated that the compressed Slack Data was 1.67 gigabytes, and that the compressed data could not be isolated and analyzed without the entire data set being processed, which would require the processing of approximately 1.7 million messages and take a minimum of five weeks to collect, process, and produce).
- ***Benebone LLC v. Pet Qwerks, Inc.*, 2021 WL 831025, at \*8–10 (C.D. Cal. Feb. 18, 2021)** (finding that the production of Slack was not unduly burdensome nor disproportional to the needs of the case considering third-party electronic discovery tools that could extract, process, and review the Slack messages at a reduced price and because the searches could be limited to certain channels, users, or custodians to reduce the volume of messages reviewed).

# Slack Example – Single Case (20 Custodians)

- **Logging issues presented:**
  - Volume!
  - What is the definition of a document (single messages, all messages within a time period, all messages within a “chain”)?
  - Traditional metadata associated with messages may not exist or be easily extracted because of Json format
  - Often difficult to determine privilege in short message format, requiring additional due diligence from participants in conversation

Type of Artifact	Count
<b>Total Messages</b>	<b>40 Million</b>
<b>Conversations:</b>	300,000
- <b>Public Channels:</b>	500+
- <b>Groups:</b>	1000+
- <b>Multi-Party IM's:</b>	80,000+
- <b>Direct Messages:</b>	300,000+
<b>Attachments:</b>	1.5M

# Rule 37(e): Failure to Preserve ESI



If electronically stored information that should have been preserved in the anticipation or conduct of litigation is lost because a **party failed to take reasonable steps to preserve it**, and it cannot be restored or replaced through additional discovery, the court may:

- (1) upon finding prejudice to another party from loss of the information, order measures no greater than necessary to cure the prejudice; or
- (2) only upon finding that the party acted with the intent to deprive another party of the information's use in the litigation:
  - (A) presume that the lost information was unfavorable to the party;
  - (B) instruct the jury that it may or must presume the information was unfavorable to the party; or
  - (C) dismiss the action or enter a default judgment.

# “Reasonable Steps” ≠ Perfection

Due to the ever-increasing volume of electronically stored information and the multitude of devices that generate such information, perfection in preserving all relevant electronically stored information is often impossible. . . . This rule recognizes that “reasonable steps” to preserve suffice; it does not call for perfection.

## **But:**

The court should be sensitive to the party’s sophistication with regard to litigation in evaluating preservation efforts; some litigants, particularly individual litigants, may be less familiar with preservation obligations than others who have considerable experience in litigation. For example, the information may not be in the party’s control. Or information the party has preserved may be destroyed by events outside the party’s control — the computer room may be flooded, a “cloud” service may fail, a malign software attack may disrupt a storage system, and so on. Courts may, however, need to assess the extent to which a party knew of and protected against such risks.

# Reasonable Steps – Best Practices

- Understanding the client’s infrastructure (retention plan meeting)
- Development and documentation of a “retention plan”
- Issue legal hold memorandum
- **Determine whether additional steps are required to preserve “dynamic” ESI**
- Follow-up with “key players”
- Engage opposition in active preservation dialogue at Rule 26(f) conference with goal of reaching an agreement on the scope of preservation
- Monitor compliance
- Periodically update legal hold order
- Documentation and transparency

# Preservation Considerations with Newer Data Types

- **It is an official communications platform for the company?**
- **Is it relevant to the claims and defenses?**
- **Is it proportional to the claim and defenses?**
  - Cost of preservation?
  - Burden of preservation?
- **Who is the opposing or requesting party? Judge? Government?**
- **Should you consider a bright line practice**
  - Always preserve?
  - Never preserve?
  - Preserve when relevant and proportional?

# Practical Aspects of the Preservation, Collection, Review & Production of Newer Data Types

# eDiscovery Issues with Chats

- **Short message formats such as MS Teams Chats or Slack Chats presents several problems from a traditional e-discovery perspective:**
  - What is a document (i.e., single message?, thread?)
  - Difficult to identify the actors
  - Short message format often difficult to understand/interpret
    - Slang
    - Emoji's
    - Abbreviations


















# Preservation – Where is the Data Stored?



Microsoft Teams

*Where are your Microsoft Teams data?*

Internal 1:1 chat	External 1:1 chat	Chat inside a channel	Recorded meetings	Voicemail
 Hidden file inside mailbox	 Hidden file inside mailbox	 Stored in SharePoint	 In the Stream application	 In the user's mailbox
 Accessible via eDiscovery	 Accessible via eDiscovery	 Accessible via file tab in a Teams channel	 Accessible to all attendees within Teams	 Accessible via Exchange
Internal 1:1 files	External 1:1 files	Files inside a channel	Meeting chat and files	Voicemail transcription
 Accessible via OneDrive for Business	 Accessible via OneDrive for Business	 Accessible via SharePoint's document library	 Files via Teams, chat via Stream	 Stored in user's mailbox



# Teams Storage

## WHERE TEAMS CONTENT IS STORED

	Location of chat messages and posts	Location of files and attachments
<b>Teams 1:1 chats</b>	Messages in 1:1 chats are stored in the Exchange Online mailbox of all chat participants.	Files shared in a 1:1 chat are stored in the OneDrive for Business account of the person who shared the file.
<b>Teams group chats</b>	Messages in group chats are stored in the Exchange Online mailbox of all chat participants.	Files shared in group chats chat are stored in the OneDrive for Business account of the person who shared the file.
<b>Teams channels</b>	All channel messages and posts are stored in the Exchange Online mailbox associated with the team.	Files shared in a channel are stored in the SharePoint Online site associated with the team.
<b>Private Teams channels</b>	Messages sent in a private channel are stored in the Exchange Online mailboxes of all members of the private channel.	Files shared in a private Channel are stored in a dedicated SharePoint Online site associated with the private channel.

# Legal Hold – MS Teams



Microsoft Teams

- **Native Legal Hold Functionality with Security & Compliance Center**

Feature	E3	E5
	Core	Advanced
Content Search	x	x
Core eDiscovery (incl. Hold and Export)	x	x
Advanced eDiscovery		x
Custodian management (mapping content to custodian)		x
Custodian communications		x
Deep crawling/indexing		x
Review data (query data, tags, smart tags, dashboard) and annotate (redact)		x
Analyze data (near duplicate identification, email threading, themes)		x
Non-Office 365 ingestion and processing (e.g. OCR)	Partial	x
Advanced eDiscovery Export (download, export, add to another review set)	Partial	x
Basic Audit	x	x
Advanced Audit		x

# Legal Hold – Slack



- **Key features:**

- Legal holds can now be placed on specific users to preserve their messages and files in Slack
- Legal holds can be applied to all conversations or just the direct message conversations a user is a participant in
- Legal holds will save content regardless of retention settings or if users edit or delete content
- Data subject to legal hold is accessed via export or through the Discovery API

- **However:**

- Legal holds are only available at the **Enterprise Grid** license level
- If a channel included in a hold is deleted, content is not retained

# Collection, Processing & Review

- **MS Advanced E-Discovery – Collection, Processing & Review**
- **Slack – requires export in json format then processing and unitization**
- **Traditional E-Discovery Tools for Processing, Search & Review not necessarily equipped for MS Teams & Slack:**
  - Use chat / message threading
  - Batch by message or conversation ID
  - Use family unitization for review of associated attachments
  - Key factor for both search and review: determination of group by:
    - Stand alone
    - Entire conversation
    - Portion of conversation (e.g., no. of messages, no. of hours)

# Unitizing Chats

## Problem

- Channels, group chats, and direct messages in collaboration applications like Microsoft Teams may span months or even years.
- It doesn't make sense to treat a chat spanning months as a single "document."

## Strategy

- Unitize chats by thread and to apply common-sense boundaries—e.g., midnight to midnight.
- Sometimes called "24-hour thread unitization."
- Depending on the context, you may need to negotiate unitization of chats with the requesting party.
- Bonus: May make TAR more effective.

# Formatting Chats

## Problem

- Exports of channels, group chats, and direct messages in collaboration applications like Microsoft Teams — much like text messages—are not conducive to review and production in most commercial e-discovery platforms.

## Strategy

- Some vendors have the ability to recreate some of the “look and feel” of the UI.
- This makes it much easier for reviewers and also facilitates production.
- Receiving parties typically prefer this approach as well.

# Case Law – Production Format

- **Each Message is Separate:**
  - *Citizens for Responsibility & Ethics in Wash. v. U.S. Dep’t of Justice* (D.D.C. May 26, 2020)
- **Day / Hour Approach**
- **X Many Messages Before / After Responsive Content:**
  - *Sandoz, Inc. v. United Therapeutics Corp.* (D.N.J. Mar. 29, 2021 & June 16, 2021)
  - *Management Registry, Inc. v. A.W. Companies, Inc.*, 2020 WL 468846 (D. Minn. Jan. 29, 2020)
- **Hybrid Approach:**
  - *Barker v. Insight Global, LLC*, 2019 WL (N.D. Cal. May 3, 2019)
  - *Laub v. Horbaczewski* (C.D. Cal. Nov. 17, 2020)



# Ephemeral Challenges

- **Is the information stored and for how long?**
- **Where is the information stored?**
- **Can you get to the information?**
  - Corporate Policy
  - BOYD Policy
  - Privacy Laws
  - Stored Communications Act
- **How do you preserve the information?**
- **How do you collect the information?**

# Possession, Custody & Control - Three General Standards

## **Legal Right Standard**

- When a party has the legal right to obtain the Documents and ESI

## **Legal Right Plus Notification**

- When a party has the legal right to obtain the Documents and ESI. Plus, if the party does not have the legal right to obtain the Documents and ESI that have been specifically requested by its adversary but is aware that such evidence is in the hands of a third party, it must so notify its adversary

## **Practical Ability Standard**

- When a party does not have the legal right to obtain the Documents and ESI but has the “practical ability” to do so

# The Problem:

Case Law Across (and Often Within) Circuits Unclear and Inconsistent

CATEGORY	CIRCUIT											
	1	2	3	4	5	6	7	8	9	10	11	DC
Legal Right			X		X	X	X	X	X	X	X	
Legal Right Plus Notification	X			X		X				X		
Practical Ability		X		X				X		X	X	X

# DOJ Guidance – Ephemeral Messaging

Policy in November 2017	Revised Policy in March 2019
<p>"Appropriate retention of business records, and prohibiting the improper destruction or deletion of business records, including <b>prohibiting employees from using software that generates but does not appropriately retain business records or communication</b>"</p>	<p>"Appropriate retention of business records, and prohibiting the improper destruction or deletion of business records, including <b>implementing appropriate guidance and controls on the use of personal communications and ephemeral messaging platforms that undermine the company's ability to appropriately retain business records or communications or otherwise comply with the company's document retention policies or legal obligations</b>"</p>

# Our Thoughts

- **Cannot stop the technological evolution**
- **Can take proactive steps to prepare for such technology to limit risk and costs:**
  - New technology committee
  - Policies
    - Use (e.g., whether and which platforms)
    - Retention (limit retention to extent practical)
    - Features (e.g., turn off recordings)
  - Legal Hold
  - Discovery
  - Education & training (e.g., corporate hygiene in document creating)

Questions?

# Contact Information

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# Reference Materials



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- **Counsel to country's largest financial institutions and Fortune 500 companies manufacturing consumer products**
- **Practice**
  - Class action defense, including complex, multiforum cases
  - Criminal and regulatory investigations
  - Appeals and critical motions
- **Regularly speaks and publishes on issues surrounding complex commercial litigation**
- **Editor and regular contributor to Class Action Insider blog**

Best Lawyers  
**ONES TO WATCH**

# John Rosenthal

- **Winston & Strawn LLP - Washington, D.C.**
  - Antitrust and commercial litigator
  - Chair, Winston E-Discovery & Information Governance Group
  - National E-Discovery Counsel for several Fortune 500 companies
- **The Sedona Conferences:**
  - Working Group 1 on Electronic Discovery
  - Working Group 6 on International Privacy
  - Working Group 11 on Data Security
- **Advisory Board - Georgetown Law School eDiscovery Institute**
- **DC Bar – E-Discovery Committee**
- **Editor-in-Chief – eDiscovery Advantage**

*“John Rosenthal is one of the best e-discovery lawyers in the US. One his great strengths is how good he is in the courtroom and before judges about e-discovery matters.” Legal 500*

*"A great trial lawyer who is also an expert on discovery matters; a bulldog for his clients who is always prepared on the law and the facts. He's not afraid to go to court, and understands the business and risks that actually matter to his clients." "John is a leader in the field of e-discovery."*



# Jason Moore

- **Senior E-Discovery Attorney**
- **Winston & Strawn LLP - Washington, D.C.**
- **Experienced litigator in commercial, intellectual property, product-liability, healthcare, antitrust, and government investigation matters**
- **Practice:**
  - Counseling clients on defensible information governance, preservation, collection, review, production, and privacy
  - Representing clients in litigation in connection with discovery and spoliation matters
- **Member:**
  - The Sedona Conference Working Group 1 on Electronic Discovery
  - International Association of Privacy Professionals
  - DC Bar E-Discovery Committee
- **Editor – Winston & Strawn eDiscovery Advantage**

# Marcia Bobb

- **Winston & Strawn LLP Legal Innovation Center – Houston, TX**
- **Licensed Attorney with 20+ years experience in commercial litigation, antitrust and government investigations**
- **Senior Manager responsible for 150+ person document review, foreign language translation and alternative legal services business unit**
  - Represents broad spectrum of litigation (antitrust, commercial litigation, government investigations) and transactional matters (contract and NDA review, corporate due diligence, lease summaries, energy infrastructure, regulatory filings)
  - Specializes in analytical approach to document reviews with a focus on reducing the data set and optimizing efficiencies
  - Deploys specialized teams that become expert on the needs/workflows of individual clients

# eDiscovery & Information Governance

**Our firm has built a full-service vendor and consulting practice providing services to our clients and case teams in the complex areas of eDiscovery and information governance** both within the United States and around the world. Our team includes highly experienced partners, eDiscovery attorneys, review attorneys, project managers, and technologists geographically dispersed among our offices.

**800+**

**Matters  
Served  
Annually**

**150+**

**Production Terabytes  
under management**

**250,000+**

**Hours of project  
management and  
review annually**

Winston serves as national counsel for eDiscovery issues for multiple companies across a wide variety of industries, dramatically reducing costs and eliminating the need to educate multiple firms on IT infrastructure and retention policies.



Automotive



Electronics



Agriculture



Pharmaceutical



Finance

Winston team members are experienced on most commercially available litigation support tools and platforms, with technical certifications including:

- ▶ EnCase® Certified Examiner (EnCE®)
- ▶ AccessData Certified Examiner (ACE)
- ▶ International Society of Forensic Computer Examiners (IAC)
- ▶ Certified Computer Examiner (CCE)
- ▶ Int'l Society of Forensic Computer Examiners (ISFCE)
- ▶ Relativity
- ▶ Nuix
- ▶ Brainspace

# Legal Innovation Center

## Document review = significant cost and risk

The volume of information at issue requires better people, greater use of analytical tools, and close coordination with case team members

### Winston's Approach:

- Reduce data set subject to “eye’s on review” through use of:
  - Continuous Multimodal Learning (CMML)
  - Predictive coding
  - Targeted and portable learning
  - Clustering/categorization
  - Metadata dashboard
  - Communications/conversations/thread analysis
  - Concept search

## Lower Cost Managed Review Center

Winston operates a managed review center with Winston review attorneys that are charged at rates competitive with domestic LPOs

### Services

- English language review
- Foreign language review
- Source code review
- Translation
- Contract review
- Deal due diligence

# Consulting Services

<p><b>Litigation Response Programs</b></p>	<p><b>Cross-Border e-Discovery</b></p>	<p><b>National e-Discovery Counsel</b></p>	<p><b>Centralized Written Discovery</b></p>	<p><b>Information Governance Programs</b></p>	<p><b>Social Media / Ephemeral Communications</b></p>
<p><b>Design and implement litigation response programs</b> to include gap analysis, guidelines, managing RFI/RFP, tool selection/implementation and education.</p>	<p>With experts in various jurisdictions and across Winston &amp; Strawn’s international offices, we have <b>unparalleled experience in handling multinational litigation</b> and working through international data protection and privacy and compliance issues regarding data transfers.</p>	<p><b>Single resource to develop and implement</b> corporate e-discovery processes, develop preservation best practices, manage the Rule 26(f) process, draft/argue complex motion practice, including defending sanctions and spoliation claims.</p>	<p><b>Develop, implement and manage</b> centralized written discovery programs to ensure consistency and reduce costs across your litigation portfolio.</p>	<p>Ability to <b>design and implement</b> information governance programs to include policies, schedules, education and compliance.</p>	<p>Understanding whether and <b>how to adopt newer forms of social media</b> and ephemeral communications in alignment with legal and IG obligations.</p>
<p><b>Cloud Migration</b></p>	<p><b>Investigations</b></p>	<p><b>Forensics</b></p>	<p><b>Defensible Deletion</b></p>	<p><b>Deal Due Diligence</b></p>	<p><b>Contract Lifecycle Management</b></p>
<p>Transiting data to cloud-based solutions and providers to <b>ensure data integrity</b> and <b>continuity</b>.</p>	<p>Uniquely suited to <b>assist clients and teams</b> in internal investigations.</p>	<p><b>Certified examiners to assist clients</b> with the forensic collection and analysis review of ESI.</p>	<p>Managing the <b>elimination of electronic information</b> that is redundant or outdated in a manner consistent with legal and regulatory hold obligations.</p>	<p>Conduct <b>deal due diligence e-discovery/legal hold</b>, data security and information governance risk.</p>	<p><b>AI-based</b> contract discovery, classification and organization.</p>