



Monday, October 25
11:00am-12:30pm

201 - ACC Chair's Choice: eDiscovery - Nuts, Bolts & Building Plans

Timothy McMichael
Senior Counsel
Wyndham Vacation Ownership, Inc.

Sonya Sigler
Vice President, General Counsel
Cataphora, Inc.

Ron Willis
Senior Corporate Counsel & Legal Risk Manager
McAfee, Inc.

Faculty Biographies

Timothy McMichael

Tim McMichael is senior counsel, litigation, for Wyndham Vacation Ownership Inc. ("WVO") in Orlando, Florida. His responsibilities include managing all non-employment litigation for WVO.

Prior to joining WVO, Mr. McMichael was a litigation associate in the Seattle, Washington office of Heller Ehrman for five years.

He currently is a member of Wyndham Worldwide Corporation's Pro Bono Committee and volunteers with Street Law Inc., working with high school students in the Orlando, Florida area.

Beginning mid-October, Mr. McMichael will become assistant general counsel for Premera Blue Cross in Seattle, Washington.

Mr. McMichael received a BS from the University of Utah and is a graduate of the University of Washington School Law.

Sonya Sigler

Sonya L. Sigler is the vice president, operations and general counsel at Cataphora Inc. She is a frequent writer and speaker on electronic discovery issues and many other topics.

Prior to Cataphora, Ms. Sigler was in-house counsel at Sega of America and Intuit Inc.

Ms. Sigler is an active member of ACC, the American Bar Association, and The Sedona Conference Working Group 1 on Electronic Document Retention and Production. She is active in her community and is the chairman for the Chickens' Ball Steering Committee and is a member of the Governance Council for the San Carlos Charter Learning Center. Her past board work has included founding the Women in Interactive Entertainment Association, Women in Technology Advisory Board and the Nova Vista Symphony.

Ms. Sigler holds a BA from UC Berkeley and a JD from Santa Clara University.

Ron Willis

Senior Corporate Counsel & Legal Risk Manager
McAfee, Inc.

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**eDiscovery Nuts & Bolts
 Measure Twice, Cut Once**

**Tim McMichael
 Sonya Sigler
 Ron Wills**

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Nuts & Bolts Overview

- Mapping Your eDiscovery Process
- Retooling Your eDiscovery Process
- Assigning Roles & Responsibilities
- Choosing Vendors/Hiring In-House
- What It Looks Like In Action
- Resources
- Q&A, Contacting Us

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Mapping Your eDiscovery Process

- Write It Down -- All of It
- Is it a Process?
- Is It Repeatable?
- Is it Reasonable? i.e. Defensible?

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**WHAT DOES YOUR
EDISCOVERY PROCESS
LOOK LIKE?**

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Company Policies/Guidelines

- Records Retention
- Records Hold
- Backup Tapes – E-mail/E-Documents
- Outside Counsel
- Information Security Organization/ IT
- Collection, Processing and Production of Documents

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Action Triggers

- Complaint
- Investigation
- Notice of Lawsuit
- Merger or Acquisition

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Preservation Planning

- Rule 26(f) Meet & Confer
 - Discovery Plan
 - Data Preservation
 - Scope - relevancy, custodians, date ranges
 - Accessible, Inaccessible
 - » File types, locations of data
 - Production of Data
 - Format, Other details
 - Privileged Information - Process
 - Upfront Discussion and Report
- Rule 16 - Scheduling Conference

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Preservation Implementation

- Records Hold Order
 - Who Drafts the Records Hold Order
 - How is it Communicated
 - How Often is a Reminder Sent Out
- Revise Records Hold Order as Necessary

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Records Hold Order

- Business/JV/Subsidiary
- Product(s)
- Region/Country
- Case Name and Matter Number
- Date Parameters
- Summary and Scope of Matter
- Description of Records Subject to Hold Order

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Penalties for Failure to Preserve

- Monetary Sanctions
- Adverse Inference Charge
- Preclusion of Evidence
- Default Judgment

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Spoilation that is not due to good faith:

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Handling Privileged Materials

- Define the Process Upfront
 - Quick Peek - turn over data quickly
 - Claw Back Procedures
- Follow the Procedure
 - Return
 - Sequester
 - Destroy
- Priv Log - how flexible is it?
 - Be Descriptive
 - Software Tools

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Production

- Native
 - Meta-data and embedded data
 - Unique ID
- FRCP Default - Rule 34
 - Requesting Party Specifies or Parties Agree
 - Nothing Specified or agreed to
 - Ordinarily Maintained
 - Reasonably Usable
 - Not More than One Format
- Shared Database

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Interviews

- Identify Custodians/ Witnesses
 - Keep List of Custodians
- In Person and/or Telephone Interviews
- Copy of the Hold Order
- Interview Form

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Interview Form

- Contact Information
- Does their Assistant/Secretary Maintain Any Files
- What is Their Involvement in this Case
- What Types of Documents do They Have
- What Types of E-Mail Software/ Applications They Use

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Interview Form

- Archive E-Mail
- Instant Messaging
- Types of Software (i.e. Word, PowerPoint, excel)
- Database Applications

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Interview Form

- Password Protect/Encrypted Files, if yes What Types of Files (Get Password)
- Store/Save Electronic Documents (i.e. My Documents Folder, Shared Drive, Desktop, etc.)

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Interview Form

- Other Stored data and media
 - Floppy Discs
 - CD-Rom
 - Flash/Thumb Drives or Removable Hard Drives,
 - Blackberries, Palm Pilots, Calendars PDAs,
 - Cell Phones (Text Messaging and Camera)
 - Digital Cameras
- Voice Mail

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Classify Custodians

- Add Any New Custodians to the List of Custodians that were Identified During the Interviews
- Before You Collect or Process **any** ESI Classify Your Custodians
 - Key
 - Relevant
 - Possibly Relevant
 - Not relevant

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Discuss Processing Strategy

- Company's Views on how to Process ESI
- Understand How ESI is Collected and Processed
- Volume of ESI to be Collected and Processed
- Value of the Case
- Form of Production

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Collection Plan

- Plan Early, if possible
- Communicate
- Consistent
- Defensible – Not Perfect
- Focused Collection
 - Training
- No Spoliation
- Document Decisions
- Proactive

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Collection Criteria

- Complaint
- Records Hold Order
- Request for Production
- Parameters/Scope
- Objections
- Deadlines
- Single Case or Serial Litigation

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Collection Plan

- Identified Potential Document Custodians and Locations,
- Interview Custodians
- **Don't Print or Forward** Any Custodian's **E-mails or Electronic Documents**
- Identify Where E-mails and ESI are located
 - Is there a map of where company has ESI
- Are there any E-mail janitors, archives?

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Collection and Processing Plan

- Forensics
- Archives, Back Ups
- What is the Volume
 - Sampling
- Who is Doing the Collecting
 - Custodians
 - Collection Teams
- Are There Any Restrictions

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Collection Plan

- Track Hard Copy Documents and ESI
 - Chain of Custody
- Get Information you Need to Provide to IT
- Identify Unusual Forms of ESI
- Copy ESI
- Keep Pristine Copy of ESI

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Site Collection

- Obtain a Contact Person at the Site to Assist you
 - Gain Access to Site
 - Schedule Interviews
 - Assist with Supplies
 - On-site Shipping Information, etc.
- External Hard Drive for all Electronic Documents
 - Training

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Site Collection

- Inform Vendor of Your Plans so they can Coordinate
- Track What Leaves the Site and When it is Returned
- Plan to put Hard Copy Documents Back

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Document Review (Including Privilege)

- Planning
 - Define timeline, approach, staffing, review criteria, use needs, database functionality, production specs
- Staffing
 - In-house and outside counsel, service providers, subject matter experts

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Document Review (Including Privilege)

- Method
 - Human, Computer Assisted, Computerized, Combination
- Format
 - Online Native Software, Native Using Quick Viewer, Online Image, Blowback Hardcopy
- Structure
 - Database, Coding and Comment Fields, Log Related Fields

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Document Review (Including Privilege)

- Criteria
 - Responsive (yes/no)
 - Case Specific Coding
 - Privilege (yes/no)
 - Reason (Drop Down Menu)
 - To populate Privilege log
 - Redaction Needed
 - Complete (yes/no)
 - Confidentiality Designation
 - Undetermined Option

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Review risks

- Failure to find responsive documents
- Failure to recognize responsive documents
- Failure to recognize privileged documents
- Inconsistent treatment of documents (e.g., duplicates)
- Failure to complete project in a timely manner

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Evaluating the review process

- Accuracy of review depends on
 - Human factors (e.g., reviewer attention, knowledge, effort)
 - Query quality (if you don't ask the right questions, you cannot get the right answer)
 - Processing accuracy (e.g., miss email bodies or names on CC: list)
- Must evaluate all parts of the process
- Sampling techniques are available to assess quality of project

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Afterwards: Closing the Database

- Legal Hold & Record Retention Compliance
- Opportunities for Re-Use

---versus---

- Risks of Maintaining
- Storage Costs

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Documentation of Process

- Substantiates Reasonableness of Effort
- Format
- Consistency

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Purpose of Documentation

- Provide Documentation of Reasonable/Good Faith Efforts
- Protect Company Interests
- Provide Information to Explain the Negative
- Facilitate Case Information Management
- Satisfy Amendments to FRCP
- Avoid Rework
- Allows Historical Investigation Data to Future Case Teams

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Documentation Tools

- Design of Tool
 - Excel Spreadsheet with Advanced Functionality
 - Automated Formatting Based on Company Records
 - Ability to Generate Reports Base on Populated Data
 - Build in Flexibility
- Benefits of Standard Tool
 - Consistency
 - Accuracy
 - Defensibility

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Documentation Discoverability

- Investigation Documentation may be Discoverable
- Anticipate Production
 - Track Data without Commentary
 - Update Chart as soon as Practical after Activity to Ensure Accurate Data
 - Track All Investigation Activity

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Budgets

- Be Thorough
 - All Vendors
 - All Lawyers
- See the Checklist for costs
- Consider 2 Biggest Costs
 - Collection/Processing
 - Review

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Budget Considerations

- Single v. Multiple Vendors
- General Fees
 - Set-up
 - User License Fees
- Training Costs
- Bundling

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Processing to Production Costs

- Data Loading
- Processing Costs
- Hosting Costs
 - Shared Databases
- Archiving Data
 - For later use
 - Data Decisions
- Production Costs

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Other Costs

- Professional Services
- Termination Costs
 - Transfer Out
 - Conversion of Data
- Service Level Agreement

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Retooling Your Process

- Holes in Your Process
- Duplicative Efforts
- Process Models
- Need for New Tools or People
- Costs to Be Cut?

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Retooling Your Process

- Keyword Search
- Keyword Generator/Linguists
- Moving Beyond Keyword Search
 - Clustering
 - Ontologies
 - Pattern Analysis (Social, Behavioral)
 - Analytics (Relationship)
- Priv Log Maker

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Getting to a Manageable Review Set

Focus on finding, reviewing & using the "right" data, not just filtering data

These figures vary based upon the data set received

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Myth: Keyword Searching is the Way to Go

- Missing in Action (Under-inclusive)
- Unwanted Extras (Over-inclusive)
- Multiple subject/persons (Failure to Disambiguate)

Reality: Keyword Search is one tool among many!

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Keyword Accuracy Example

Keyword search reduced the document set by only 47% and 88% of the documents returned by keyword search were not responsive (Over-inclusive)

8,553 responsive documents missed by keyword search (Almost 8% of responsive documents missed by keyword search - Under-inclusive)

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1. Missing in Action I

- Missing abbreviations / acronyms / clippings:
 - incentive stock option but not ISO
 - Board of Directors but not BOD
 - 1998 plan but not 98 plan
- Missing inflectional variants:
 - grant but not grants, granted, granting
- Missing spellings or common misspellings:
 - gray but not grey
 - priviledged but not privileged, priviledged, privedlged, privedled, privedlged, privedledged, ...

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Missing in Action II

Missing syntactic variants:

<i>board of directors meeting - but not</i>	
<i>meeting of the board of directors</i>	<i>mtg of the directors</i>
<i>BOD meeting</i>	<i>BOD meetings</i>
<i>board meeting</i>	<i>board meetings</i>
<i>BOD mtg</i>	<i>BOD mtgs</i>
<i>board mtg</i>	<i>board mtgs</i>
<i>directors' meeting</i>	<i>directors' meetings</i>
<i>directors' mtg</i>	<i>directors' mtgs</i>
<i>mtg of the BOD</i>	<i>mtgs of the BOD</i>
	<i>mtgs of the directors</i>

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Missing in Action III
 Missing synonyms / paraphrases:

hire date but not start date
approved by Smith

but not

Smith's approval	the go ahead from Smith
the approval of Smith	the nod from Smith
Smith's ok	Smith's signature
Smith's go-ahead	Smith's sign-off
Smith's go ahead	the sign-off of Smith
the go-ahead from Smith	the signoff of Smith

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Missing in Action IV
 As a keyword item, the address

101 E. Bergen Ave., Temple, CA 90200

does not match any of:

101 East Bergen Avenue
the Bergen site
the Temple location
our 90200 outlet

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2. Unwanted Extras I

- ▶ **Options**
 Target: Sheila was granted 100,000 **options** at \$10
 Match: What are our **options** for lunch?
 Match in a signature line:
 Amanda Wacz
 Acme Stock **Options** Administrator
- ▶ **Destroy**
 Target: **destroy** evidence
 Match in a disclaimer: The information in this email, and any attachments, may contain confidential and/or privileged information and is intended solely for the use of the named recipient(s). Any disclosure or dissemination in whatever form, by anyone other than the recipient is strictly prohibited. If you have received this transmission in error, please contact the sender and **destroy** this message and any attachments. Thank you.

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Unwanted Extras II

- alter*
 Target: **alter, alters, altered, altering**
 Matches: **alternate, alternative, alternation, altercate, altercation, alterably, ...**
- grant
 Target: stock option **grant**
 Matches names: **Grant Woods, Howard Grant**

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3. Words that Relate to Multiple Subjects

- Example: **refund** is used to refer to:
 - FERC-ordered refunds owed by Enron for overcharging
 - Tax refunds (both corporate and personal)
 - Mundane business matters
- In a given matter, one might be of interest while the others are not

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Keyword Truths

- Under-inclusive - missing relevant or important info
- Over-inclusive - costly to review
- "Reasonable Keyword Search" doesn't exist
- Effective keyword search is difficult/impossible
 - Index Data, Analyze Index
 - Suggest keywords or approach
- Keywords may not be appropriate for the data



Keyword Search is ONE Tool in Your Arsenal

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Keyword Culling

Pro	Con
<ul style="list-style-type: none"> ▶ Word Stemming <ul style="list-style-type: none"> –Hous* - house, housemate, household ▶ Easy to use/explain/agree ▶ Familiar ▶ Fast results 	<ul style="list-style-type: none"> ▶ Over-inclusive <ul style="list-style-type: none"> –Disambiguate ▶ Under-inclusive ▶ Word must be present ▶ Hard to craft ▶ Ineffective with short messages, IMs

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Search Methodology Continuum

- Review Methodology - Decided Upfront
- Identify Issues in the Case
 - Formulate Queries and Approaches for Finding Responsive Documents
 - Formulate Relevancy and Responsiveness Guidelines
- Identify Primary Participants
- Select or Triage Documents for Review


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Review Tools for Relevancy Assessment

- Keyword Searches, Culling
 - Slices of Data are Reviewed
- Categorization of Data
 - Entire Dataset is Categorized
 - Review Targeted Data
- Automated Review
 - Categorization of Dataset
 - Random Sampling (Statistically Significant)


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Categorization of Data for Review

- Categorize Entire Data Set
 - Spam/Porn/System Files
 - Personal/Private Data
 - Non-relevant Business Data
- Business Data
 - Relevancy Assessment by Topic
 - Privilege Review
- Keyword, Topic Analysis - Overlap, Holes


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Categorization Methods

- Statistical Methods (#s based)
 - Topic Clustering
 - Statistical Similarity
 - Counting #s of words, appearance together
 - Latent Semantic Indexing
- Linguistic Methods (Word Based)
 - Keyword (Culling Method)
 - Ontologies

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Clustering

Clustering just means putting documents into groups that have something in common.

- **Manually** (that's what manual review is)
- **Keyword Searches**
- **Ontologies** (linguistic filters)
- **Automated clustering** (using technology)
 - **Automated clustering by document type** (all the Word documents go into one basket)
 - **Automated clustering by creation date**
 - **Automated clustering by Actor**
 - **Automated clustering by statistical similarity** (statistical clustering) ... and many other approaches

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Clustering -- "Options"
 1 Cluster or 4 Clusters

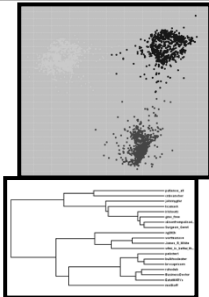
- Financial/energy trading options
- Email/computer menu-driven options
- Stock options (ISO's)
- The generic idea of an available choice of action

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Clustering

- Software implements statistical methods of finding groups of "similar" documents
 - "Similar" must be defined appropriately for the application
- Documents are categorized with very little effort by the user
- May help with document review
 - A single reviewer can look at similar documents together, produce consistent review decisions
 - Tight clustering can be used to detect "near duplicates" caused by OCR errors



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Clustering vs. queries

- Clustering is unpredictable compared to keywords or taxonomies
- The items that **look** very similar (to the clustering algorithm) may not actually **be** similar in ways that matter
 - Relevancy may depend upon fine legal distinctions
 - May vary in the same matter by subpoena and/or jurisdiction

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Ontologies

- Implement ontologies for directed searches.
 - Approach searching from a knowledge-representation viewpoint
 - Field is 25 years old, lots of work done
 - Advantages:
 - Disambiguate different meanings of the same word from their context
→ More accurate
 - Encapsulate many ways of saying the same thing
→ More thorough
 - Search for concepts, not individual words
→ More intuitive, more reusable, and faster
- Can be combined with other methods (unsupervised clustering, discussions).

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A Simple Linguistic Ontology

- **ROYALTY CONCEPT**
 - Royalty
 - Commission
 - Honorarium
 - Usage Fee
 - Slice of the Pie

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A More Realistic Ontology

- **ROYALTY CONCEPT**

• royalty	• charge for use
• royalties	• charged for use
• rty	• charging for use
• commission	• charges for use
• commissions	• licence fee
• comm.	• license fee
• honorarium	• lisense fee
• honorariums	• "take cut"--2
• honoraria	• "takes cut"--2
• usage fee	• "took cut"--2
• usage charge	• "slice pie"--5
• usg fee	• "piece pie"--5
• use fee	• "piece action"--5
• fee for use	• "slice action"--5
• fee for usage	• -king
• inoent*	• -queen
• insent*	• -prince
• earn a fee	• -princess
• eam a fee	

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Subjectivity

- GOOD WEATHER
 - Sun
 - Calm
- BAD WEATHER
 - Rain
 - Snow
 - Wind

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Tuning an Ontology

- Linguists briefed as reviewers
- Linguists read the data
- Linguists study complaint and other relevant documents
- Linguists analyze the search index

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Finding words in context

Phrase	Total Instances
risks alienating some	37
at serious risk of losing	25
are certain risks inherent in	16
are at risk of running	15
it be risking anything by	15
difference a risk o why	14
and the risks inherent in	12
without assuming any risk	8
we could risk losing next	7
avoid transferring risk to the	5
requires taking risks and the	4
can t risk not living	3
and unknown risks and uncertainties	2
a potential risk that was	2
avoid transferring risk to the	2

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Identifying misspellings, slang, etc

1. Match the index against electronic dictionary.
2. From the remaining material (not in dictionary), remove any items that are merely numbers.
3. Find (in the ontologies) any words that are **similar** to what remains.
4. Add the similar words to the ontology
This increases coverage (i.e., ensures that we retrieve documents that otherwise would have been missed)

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Ontology as a Query

But it can be slightly cumbersome to deal with directly in that form

```
q (((std:%CapacityReports % std:%DINCapacity %) + (std:%ACMEEPPlant % std:%ProductName %)) + (std:%ACMEEPPlant % std:%ProductName %) + (std:%ProductCapacity % std:%CapacityReports %)) + (std:%CapacityReports % std:%OperationsImprovement % std:%CapacityExpansion % std:%CapacityRestoration %) + (std:%ACMEEPPlant % std:%ProductName %) + (std:%EquipmentReplacement % std:%FinishingColumn %) + (std:%ACMEEPPlant % std:%ProductName %) + (std:%Audit % actor:%Audit %) + (std:%SettlementNegotiations % std:%ContractNegotiations %) + (actor:%ACMEOutsideCounsel % std:%ACMEOutsideCounsel % actor:%ACMEUBOutsideCounsel % std:%AcmeSubOutsideCounsel % actor:%AcmeSub % std:%AcmeSub %) + (std:%FTC % actor:%FTC %) + (std:%ProductName % + (std:swap std:'supply agreement' std:'exchange agreement' std:'agree to exchange')) std:'name
```

(About a quarter of its regular size)

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Variant Generation

Help the user find out search for what he meant

Graphic input:

Mr. Benjamin F. Gleason
123000
% 500,000
Mr. Jeffrey Skilling
500

buy
bought
buying
buys

Actor:

Kenneth Lay
Kenneth Lay
lay kenneth
kenlay
layk
lay ken

Benjamin F. Gleason
Benjamin F. Gleason

- ▶ Take names, numbers, and other entities for which the user wants to search
- ▶ Automatically generate likely synonyms

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Variant Generation

Keyword [Keyword Level]	Left context	Total matches [176]	Keyword	Right context	OID
148	pubco: con To Mr	Em Lay	I'm writing to	m.211097a38455554a6321411228241	
122	internal: con To Mr	Em Lay	I'm writing to	m.228643434488944015557367671	
155	and: con To Mr	Em Lay	I'm writing to	m.23529283036545455538545791	
49	meeting: con To Mr	Em Lay	I'm writing to	m.273475452431794237938825241	
29	EDRO/CO Board Of	Em Lay	Chairman of the Board @	m.48385937938345653039379254545	
19	combined by then: CEO	Em Lay	Shahaj helped hold a	m.011a54839487756469215483948	
19	total: combined: In December	Em Lay	announced the portfolio "The	m.011a54839487756469215483948	
19	and there where	Em Lay	headlines in 1995	m.011a54839487756469215483948	
19	was over: Eber: since,	Em Lay	returned to the CEO"	m.011a54839487756469215483948	
19	Self: Shajaj: In 1997	Em Lay	made his last president	m.011a54839487756469215483948	

(Number of unique contexts not displayed: 22013)

Keyword [Keyword Level]	Left context	Total matches [1894]	Keyword	Right context	OID
14	Koenig / Corp / Items @ EDRO/CO,	Koenig Lay /	Corp / Items @ EDRO/CO: John	m.koenig752a48373322483948472124571	
8	Koenig / Corp / Items @ EDRO/CO,	Koenig Lay /	Corp / Items @ EDRO/CO: Rebecca	m.koenig6133248373322483948472124571	
	Koenig Lay @ msn.com * *	Koenig Lay @	msn.com * *	msn.1433303646304545387333483948	

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Document Segmentation

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Multi-Lingual Issues

- Does language matter?
 - Lucerne
 - Luzerne
 - Lucerna
 These places were all the same city
- Name of city not necessarily expressed in the same language as rest of document
- In Europe, many email threads and documents are mixed language, and must be properly categorized as such

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Ontology Pros & Cons

- Identify acronyms
- Normalize variants
- Disambiguate terms
- Identify overly broad keywords
- Identify and correct keywords with errors
- Create extensive libraries of ontologies
- Can be used as a clustering method
- Topics can appear in more than one languages
- Reusable for different types of litigation, e.g. anti-trust, product liability etc. (and for both offense and defense)

- As with Keyword - word based
- Labor intensive, upfront

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Automated Ontology Expansion

- **Spelling variants:**
color >> colour, defence >> defencse, labeled>> labelled
- **Lemmatization** (recovering uninflected form):
walking >> walk, ate >> eat
- **Morphological variants:**
eat >> eats, eating, eaten, ate
hablar >> hablo, hablas, habla, hablan, habláis, hablamos
- **Number expansion:**
\$2.5B >> two point five billion dollars
2,567 >> two thousand five hundred sixty seven
13 >> 13th, thirteenth
- **Name variants:**
Elizabeth Van der Beek >> "Liz Van der Beek", "Liz Vander Beek", "Van der Beek, Elizabeth", "Beth Vanderbeek", etc.
- **Email variants** (mined from alias clusters file):
Elizabeth Van der Beek >> evanderbeek, liz.vanderbeek, vanderbeeki, emvanderbeek, etc.
- **Abbreviations:**
administrative project meeting >> admin project meeting, admin project mtg, admin proj mtg, etc.

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Automated Review

Attorney Knowledge Transfer

1

2 Computer Assisted Categorization

3 Test Against Decisions Made By Multiple Reviewers

4 Assess Differences

5 Make Corrections

6 Iterate Until Goals Are Met

7 Final Verification Test

8. Produce

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Fact or Myth?

Manual review by humans of large amounts of information is as accurate and complete as possible - perhaps even perfect - and constitutes the gold standard by which all searches should be measured

This is "The reigning Myth of 'perfect' retrieval using traditional means"
Best Practices Commentary on the Use of Search and Information Retrieval Methods in E-Discovery
 The Sedona Conference Journal (2007) p. 199

Human beings retrieved less than 20% of the relevant documents when they believed they were retrieving over 75%
An Evaluation of Retrieval Effectiveness for a Full-Text Document Retrieval System
 Blair & Maron (1985)

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From Document Analysis to Social Network Analysis

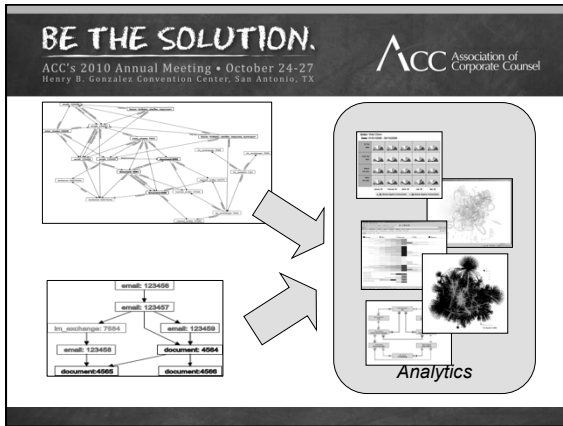
Legend
 Email
 Phone
 IM
 Meeting

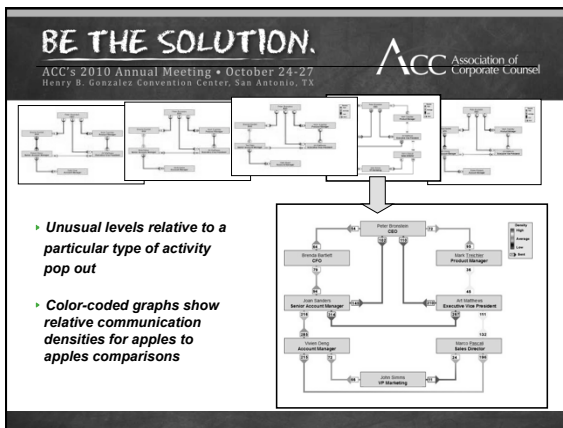
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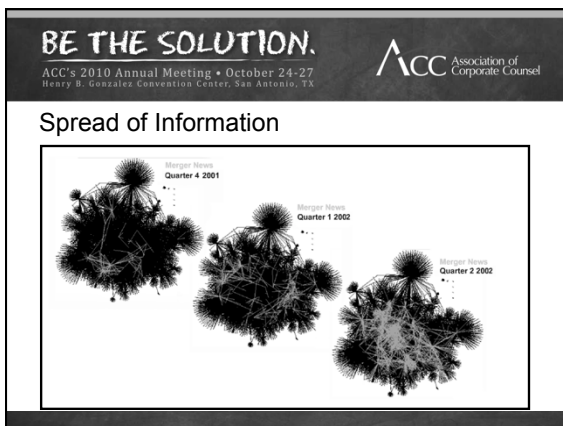
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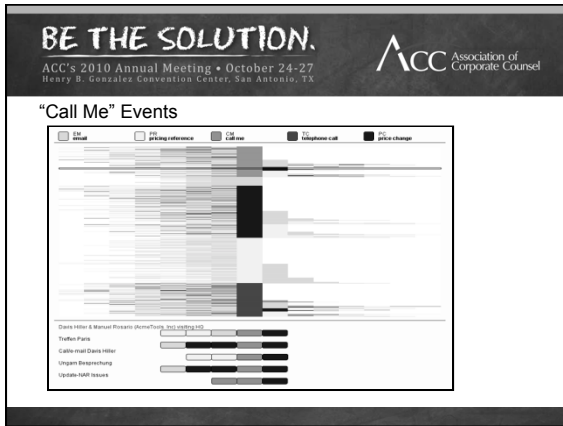
From Social Network Analysis to Discussions

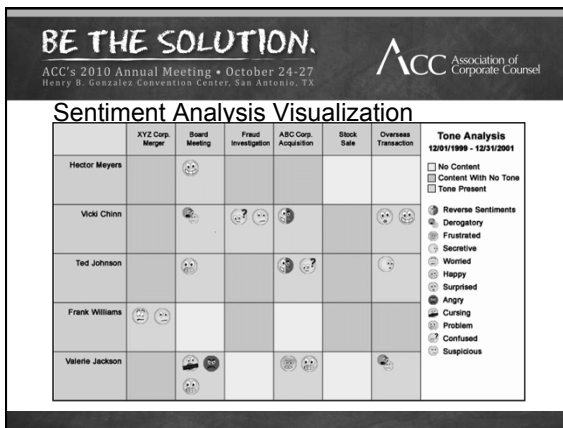
Todd R. Mary W. Frank J. Jane H. Bob F. Mary W.

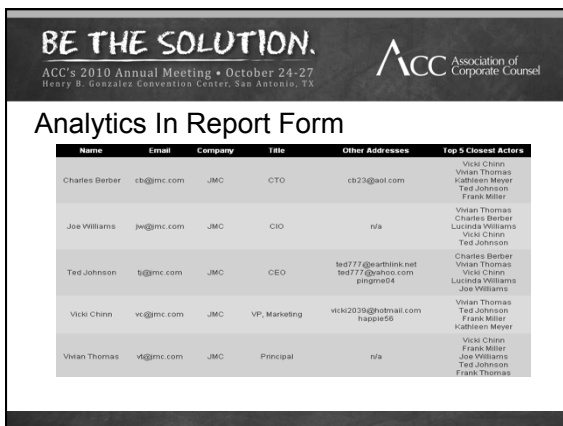












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E-Mail Communications: The Entire Dataset – Up Front

Green: Administration
 Red: Legal
 Blue: Accounting

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Analytics - Mindshare

Mindshare Parameters: PU Executive A

- Strategic Business Issues
- Financials
- Health Safety Environment
- HR Related
- HC Financials
- Legal Matters
- Internal Audit
- Plant Issues
- Supply Chain
- All Products
- Customer Base
- Trade Secrets
- Account Info
- Rediging
- Technology Agreements
- Process Methodology
- Technical Issues
- Security
- Competitors/Contacts

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Analytics - Tone Detection

Actor Tone: Graph Results

Actors: Lionel Williams, Ted Johnson, George Barbara
 Date: 08/01/2005 - 01/15/2006

- Worried
- Angry
- Problem
- Neutral


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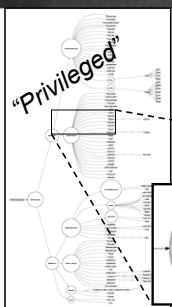


Analytics - Better Answers *and* Better Questions

- When were customary work practices circumvented?
- When did established norms of behavior change?
- Who knew, or likely knew, what facts?
- Who interacted with whom and how intimately?
- Who was involved in what types of decisions or meetings?
- Who are the real 'insiders'?
- What data is hidden or missing?
- When were electronically documented conversations "taken off line," possibly in an attempt to avoid detection?
- How did the importance of different actors change over time?

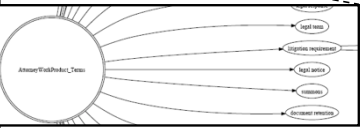
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Example: "priv" ontology

- Valuable, re-usable work product
- Combines classifiers into concepts, into bigger concepts

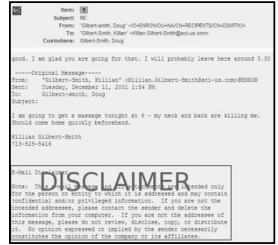


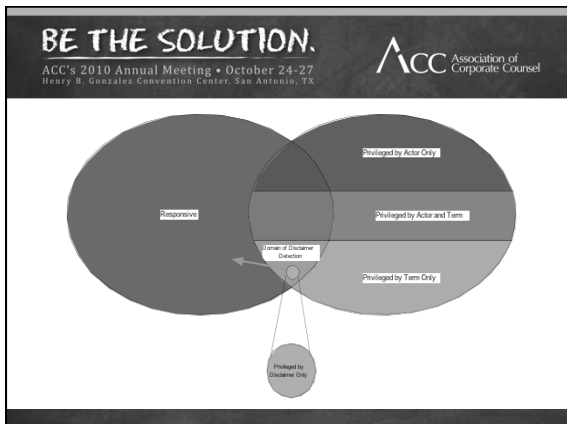
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Disclaimer Detection

- Disclaimers can throw off attempts to detect privileged communications
- Prevalent throughout many companies, even on trivial communications
- Detect them automatically, and exclude them from searches





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Priv Logs

- Expensive - But Do NOT Have to Be
- In re Vioxx Products Liability Litigation (E.D. La 2007)
- Merck's Priv Log had 30,000 items on it
 - How to Make a Judge Angry
 - How to Waste Client Money
 - How to Attract Sanctions

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Review risks

- Failure to find responsive documents
- Failure to recognize responsive documents
- Failure to recognize privileged documents
- Inconsistent treatment of documents (e.g., duplicates)
- Failure to complete project in a timely manner
- Sophisticated Tools
 - Understand What They Do and Don't Do Well
 - Inform Yourself, Speak to References, Consultants

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Transparency of Process

- Discussing Review Protocols
 - Provide transparent, defensible, sophisticated search based on document content
 - Clustering, Ontologies, Analytics, and yes, sometimes Keywords too
- Develop search methodologies for each case
 - Use technology experts in consultation with case / legal experts
- Results verifiable by Quality Control
 - Defensible sampling

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Assigning Roles & Responsibilities

- In-House/Company
- Outsourcing
- Outside Counsel
- Vendors

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Team Members – Company

- Client/Business
- In-House Attorney(s)
- Paralegal(s)
- Litigation Support
- IT Personnel
- Other Employees
- Other Paralegals

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Team Members - Vendor

- Vendor
 - Preferred Vendors
 - Project Manager

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Team Members - Contractors

- Team Lead
- Collection and Review Team

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Team Members

Once you have Your Team Members
have a Contact List Created and
Update it as Necessary.

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Team Members – Choosing Vendors

- Meeting with Vendor
 - Make Sure that Vendor Knows How to Process ESI
 - Make Sure that is Vendor Handling ESI so Metadata is Not Getting Changed
 - How is Vendor Handling Exceptions
 - How is ESI Stored
 - Ask for Budget Estimates

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Selection of a Vendor

- Requirements
 - Processing
 - Database Functionality
 - User Interface
 - Searching Capabilities
 - On-Line Review
 - Productions
 - Reports/Exports
- Demo Software

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Selection of a Vendor

- Interview Vendor's Other Clients
 - Name of Interviewee, Company/ Position
 - Are they an Active User of the Software
 - How is Database Technology Being Used
 - ESI or Paper
 - How Long have they Been Using this Software and Number of Cases/ Volume of Documents/ Pages.
 - What Functionality is Used Most

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Selection of a Vendor

- Have Deadlines been Met
- Project Management
- Pros
- Cons
- If there was one Thing you Could Change What Would it be
- Pilot Software

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Decision Matrix

Score: 1.0
 Weight: 1.0

REQUEST FOR PROPOSAL: DECISION MATRIX Sample Only Weighting is key

	Weight	TENDER SCORES			RESULTS		
		Vendor A	Vendor B	Vendor C	Weighted A	Weighted B	Weighted C
ABOUT THE COMPANY							
Quality	1	4	3	4	4	3	4
Originate, Representations, Warranties	4	4	3	4	16	12	16
Physical Files	4	4	3	4	16	12	16
PERSONNEL							
Quality	1	4	3	4	4	3	4
Experience	2	4	3	4	8	6	8
Staffing Capacity	2	4	3	4	8	6	8
Project Management	2	4	3	4	8	6	8
ABOUT THE PRODUCT/SERVICE							
Product/Service	4	4	3	4	16	12	16
Process and Infrastructure	4	4	3	4	16	12	16
OPERATIONAL SECURITY							
Physical/SITE Security	4	4	3	4	16	12	16
Employee	4	4	3	4	16	12	16
DATA SECURITY							
Business Security	4	4	3	4	16	12	16
Customer Security	4	4	3	4	16	12	16
PROJECT SECURITY							
Right to Termination	4	4	3	4	16	12	16
Conflicts	4	4	3	4	16	12	16
TOTAL					124	100	118

NOTE: Numerical entries for Scores which are outside the range of 1-5, and numerical entries for Weights which are outside the range of 1-5, will be highlighted in RED.
 *As mentioned in the text, only a beginning point.

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Implementation of a Process

- Wyndham
- McAfee

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Resources

- Sample Policies on ACC Website
 - Many available policies, documents, InfoPak
- EDRM Model is one example
 - Modeling Your Process
 - What Works for You?
- Sedona Conference RFP Document & Decision Making Matrix
 - Choosing Vendors

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Q & A

Tim McMichael
 Sonya Sigler
 Ron Wills

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Sonya L. Sigler
 Cataphora, Inc.

Tim McMichael
 Wyndham Vacation
 Ownership, Inc.

Ron Wills
 McAfee, Inc.



Extras from ACC

We are providing you with an index of all our InfoPAKs, Leading Practices Profiles, QuickCounsels and Top Tens, by substantive areas. We have also indexed for you those resources that are applicable to Canada and Europe.

Click on the link to index above or visit <http://www.acc.com/annualmeetingextras>.

The resources listed are just the tip of the iceberg! We have many more, including ACC Docket articles, sample forms and policies, and webcasts at <http://www.acc.com/LegalResources>.