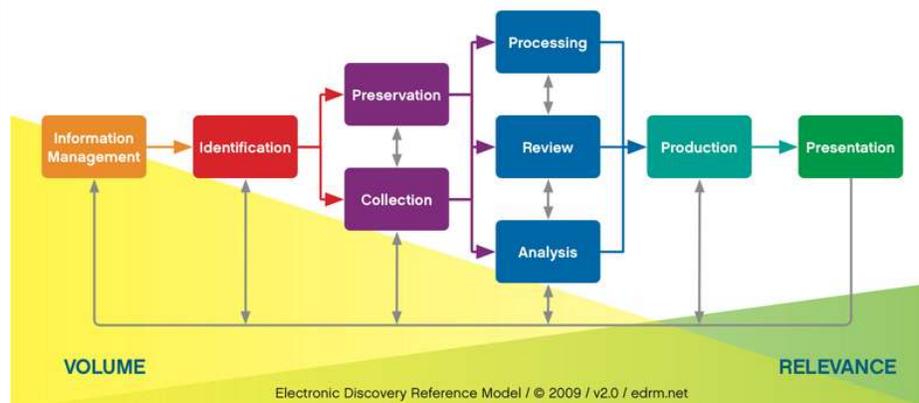


# Practicalities of E-Discovery Search, Retrieval and Review

Cecil Lynn  
Littler Mendelson, P.C.  
Phoenix, Arizona  
March 10, 2010  
602.474.3642  
clynn@littler.com

## Electronic Discovery Reference Model



## Rule 26

Meet and Confer Obligations: Discovery Plan

(f)(3)(C) any issues about disclosure or discovery of electronically stored information, including the form or forms in which it should be produced;

## Rule 34

(a)(1)(A) [A party may serve on any other party a request to produce the following items in the responding party's possession, custody, or control]: any designated documents or electronically stored information

(b)(1)(C) [The request] may specify the form or forms in which electronically stored information is to be produced.

(b)(1)(E)(ii) [Absent a specific request,] a party must produce documents ... as they are ordinarily maintained or in a reasonably usable format.

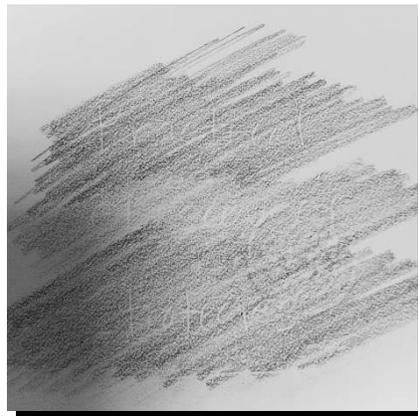
(b)(1)(E)(iii) A party need not produce the same ESI in more than one form.

## Anatomy of an Electronic Document

- Front of document: The Image
- Middle of document: The Text
- Document content may be fully searchable
- Back of Document: **Metadata**
- Literally defined as “Data about Data”



## The Original Metadata



## Why is Metadata Important

- Provides additional information about the document you might not find in the paper version
- May be used to authenticate the document
- Provides link between email and attachment(s)
- Provides link between conversation threads
- Allows for de-duplication (ability to remove or segregate duplicates)

## Differences: Metadata v. Native

- Native File: a file format used by the original creating document (e.g., Microsoft Word).
  - Viewing Native Document Requires Support for Original Application
  - Native Files Cannot Be Redacted And Still Remain Native Original
  - Cannot Bates Stamp a Native File (Requires “Hashing” – a unique digital signature or identifier based on MD5 Algorithm)
- Metadata Load File: A separate file produced with a Static Image (PDF or TIFF) that contains relevant metadata fields for use with e-discovery review tools.
  - Generally contains fields such as: Author, Date Created, and Date Modified. For Email, To:, From:, Re:, Subject:, CC:, BCC, etc.

## Are Metadata and Native Files Relevant

Sedona Principle 12 (2007)

- . . . production should . . . [take] into account the need to produce reasonably accessible metadata that will enable the receiving party to have the same ability to access, search, and display the information as the producing party . . .”
- Native file productions (with Hash Stamping) should be considered for:
  - Microsoft Excel
  - Microsoft PowerPoint

## Recently Received RFPs

- “The native electronic version of all documents produced in connection with this litigation, including metadata.”
- “A printout of all screen shots regarding Plaintiff’s employment maintained in maintained in any electronic human resources employee database”
-

## Recently Received Rog Requests

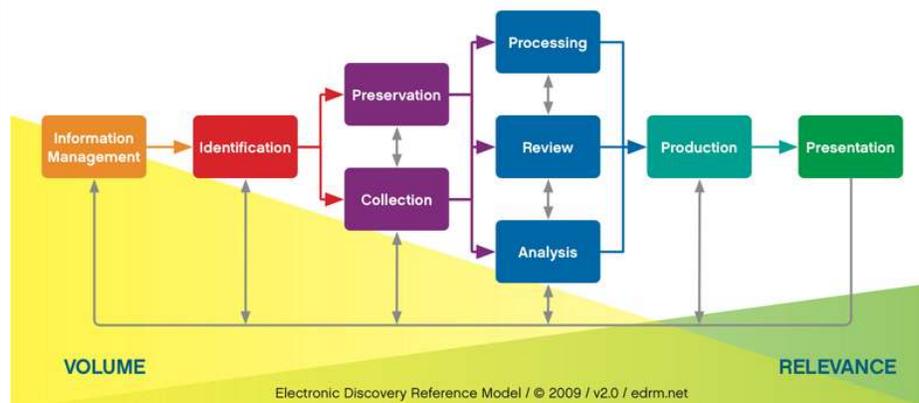
- “Identify all computer devices used during the past 5 years, by each of the people identified in Defendant’s answer to Interrogatories.”
- “Describe the document filing system/methods (whether formal or informal) of Defendant as to documents (including electronic files) related to Plaintiff. In so describing, identify each location at which information regarding Plaintiff is stored by Defendant. In so identifying, state the type of the file (paper and/or electronic), name of the file, the physical location of the file, whether the file is maintained in either electronic or paper form, all present and former custodians of the file and the reason the file is maintained.”

## Recently Received Rog Requests

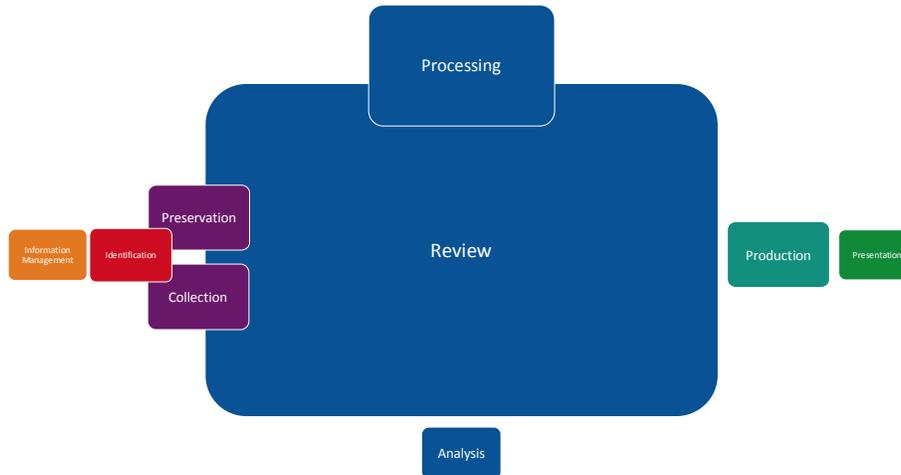
- “For each document produced in paper form, please identify the following (by bates number): the electronic device(s) on which the document was originally located and each custodian who had/has copies of the document.”

# eDiscovery Search is Different

## Electronic Discovery Reference Model



## Weighted Cost and effort



### Lexis® Total Research System

#### Legal Search is Different

- Homogeneous dataset
- Common language
- Common structure
- Familiar “metadata”
  - Court
  - Jurisdiction
  - Headnotes
  - Attorneys
  - Syllabus

Select another LexisNexis® service

#### What's New

**Find More of What Matters Most, Faster. More Relevant Content. Better Value.** New! LexisNexis Related Content ensures you won't miss critical information and is the most efficient way to conduct in-depth case law research. A left hand pane provides links to more documents related to your case. No additional searching, no training, no extra steps. And no surprises on your bill. Check out Related Content ... start your case law research now.

**Before you begin any case, you'd like a better idea where it might lead.**

See your way to more successful outcomes with LexisNexis® **Verdict & Settlement Analyzer**

[Request a Demo](#)

Shop for legal books, software & more at the LexisNexis online store. Choose from a wide selection of legal products to assist you in the practice of law and in successfully managing your legal practice.

## ESI Search Issues

- What is indexed
- Stop/Noise words
- Treatment of
  - Punctuation and Symbols
    - `\09\0a\0c\0d !@\"#$%&'()*+,-./:;<=>?[\5c]^\`{|}~`
    - Space or ignore
- Updating the index as new data is added

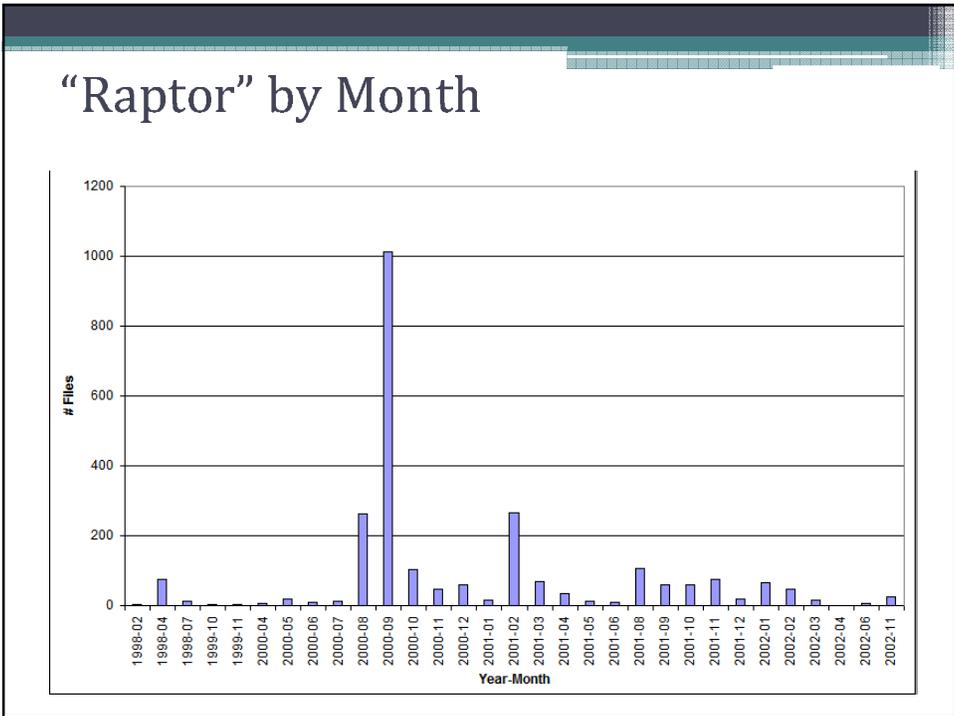
## Evaluate ESI Search Results

- By date
- By location
- By source
- By custodian

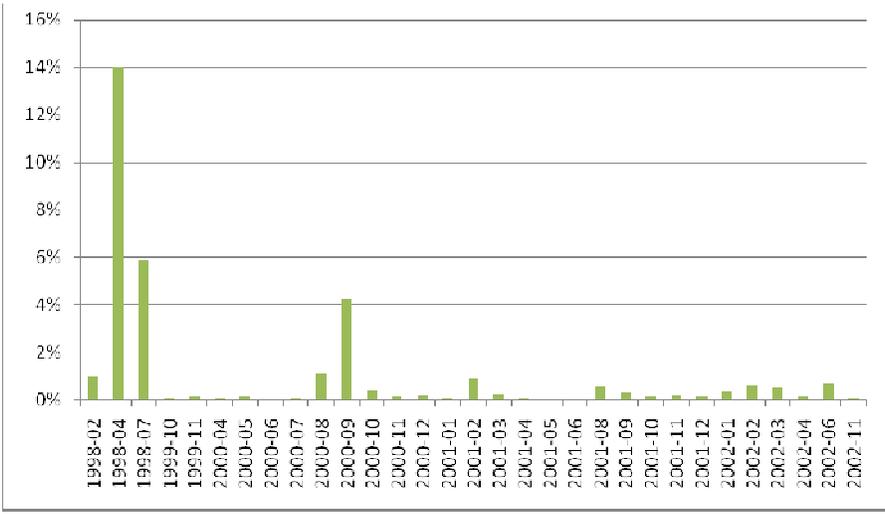
Look for patterns that may be clues to relevancy

starburst starta starck starch starving starkey started  
 starnet startangle starttexpig starnetsystems stardust  
 starla stara start\_date startinga starlight starwars  
 startmonth startpage starke starpoints start2 starnatgas  
 starley starkovich starsupply startle starco startex  
 starker starcartergy  
 starcoexp boy  
 starleaf staralismsy  
 starghill nm  
 starcomms t\_cost  
 startr s  
 started\_t point  
 starrett arit  
 stark  
 start\_memo startpos  
 starwooda arsailor  
 startc startechna startles starttint startxref starbranch  
 stacher starchy stardust1118 starer stargazer starkest  
 starkweather starletts starmark starowicz starsnbars  
 starsteel start1 start2new start3 start\_up startdd  
 startloc startmenu startng startpath1 startpath10  
 startpath2 startpath3 startpath4 startpath5 startpath6  
 startpath7 startpath8 startpath9 startshousing startunpls

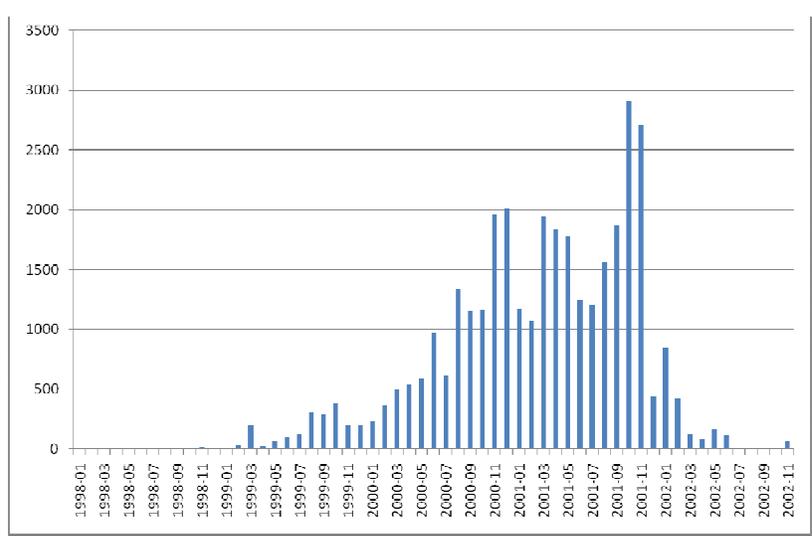
**286 Variations**  
**87,891 Startments**  
**7,111 for Star or Stars**



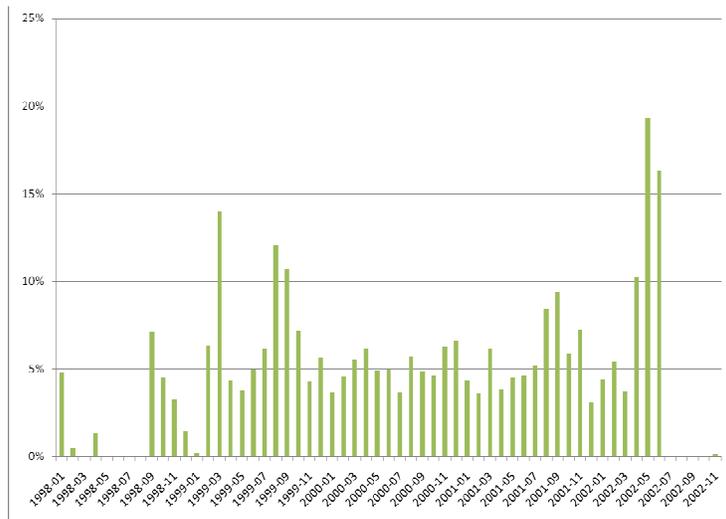
## “Raptor” As Percentage of All Items



## “Confidential” by Month



## Confidential as Percentage of All Items



## Targeting Strategies

- Mix text and fielded searches
- To/From limits
- Date range limits
- Document source or custodian limits

## Sampling

- Calculate hits for each search term
- Review a random sample of documents for terms with high hit rate
- Drop, add, or modify terms based upon joint review of sample set
  - X
  - X not Y
  - X w/5 Z
  - X and not (X w/5 W)



## Practicalities of E-Discovery Search, Retrieval and Review

Cecil Lynn  
Littler Mendelson, P.C.  
Phoenix, Arizona  
March 10, 2010  
602.474.3642  
clynn@littler.com