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THE RECOVERY OF MEANING IN A DIGITAL AGE: E-DISCOVERY AND THE RENEWAL OF JUDGMENT

William F. Hamilton[*]

Abstract

Modern litigation unfolds within a dense and expanding digital environment. Nearly every human activity now leaves behind emails, documents, metadata, collaborative communications, and machine-generated records that together form the factual foundation of contemporary litigation. This Article argues that electronic discovery is not merely a technical, managerial, or compliance process, but a core litigation practice concerned with the recovery, reconstruction, and rehabilitation of the factual world on which judgment depends.

Tracing the evolution of discovery from its twentieth-century roots to the present era of pervasive digital evidence, this Article shows how electronically stored information (ESI) continues to alter the dynamics of litigation itself. The volume, dispersion, and heterogeneity of digital artifacts mean that no party can fully understand its own case without engaging the broader, shared digital record assembled through discovery and disciplined by judicial oversight. Preservation requirements, spoliation sanctions, authentication prescriptions, and proportionality principles operate not merely to regulate adversarial tactics, but to protect the recovery of lived experience and the court's capacity to ground its judgments in reality.

This Article then examines the role of generative artificial intelligence within this landscape. Unlike earlier discovery tools such as keyword searching and traditional technology-assisted review (TAR), generative AI can illuminate relationships among documents, events, and actors, situating individual artifacts within broader temporal and organizational contexts. Properly used, generative AI can assist lawyers in recovering structure, continuity, and perspective from vast corpora of digital material. But illumination is not judgment. Generative AI can organize information and reveal patterns, yet judgment requires human engagement, interpretation, and responsibility for meaning.

Drawing on discovery rules, principles, and practices, as well as Hannah Arendt's account of judgment and worldliness, this Article contends that the central challenge of the digital age is the recovery of

* Master Legal Skills Professor, University of Florida Levin College of Law.

context sufficient to support responsible judgment, perspective, and persuasion. As data and advocacy increasingly converge, the legal profession must resist the temptation to treat technological outputs as substitutes for judgment. Instead, e-discovery augmented by generative AI should be understood as a primary means by which courts and advocates restore factual depth, the plurality of perspectives, and temporal continuity to the processes of adjudication.

I. INTRODUCTION

A lawsuit does not begin only with the filing of a complaint. More fundamentally, it begins from a simple but profound premise: the world has left its mark. Nearly every human interaction—professional, commercial, or personal—now produces a residual digital shadow. But unlike the blurred silhouettes on the wall of Plato's cave, these shadows are not pale imitations. They are durable traces of lived experience. Emails accumulate quietly, text documents record their own evolution, metadata inscribes time and authorship, collaborative applications structure conversations, and automated systems preserve actions no one expected to be remembered.[1] These artifacts form the factual ground on

1. *See* Rowe Entm't, Inc. v. William Morris Agency, Inc., 205 F.R.D. 421, 428–33 (S.D.N.Y. 2002) (early case recognizing that electronically stored information presents discovery challenges including volume, accessibility, and cost); Zubulake v. UBS Warburg LLC, 217 F.R.D. 309, 313–18 (S.D.N.Y. 2003) (observing that digital information is created and stored across multiple systems and that traditional discovery assumptions do not readily translate to electronic

which litigation proceeds. They do not declare their relevance; they simply wait to be understood.

Discovery has never been a serene exchange. It arises from an adversarial tradition shaped by strategy, guardedness, and the fear that candor may arm one's opponent. ESI has nonetheless altered this dynamic in subtle but decisive ways. The volume, dispersion, fragility, and heterogeneity of digital material in the modern ESI environment mean that no lawyer can fully grasp a client's story by looking inward alone.[2] Understanding one's own case increasingly requires looking outward—into the data repositories of others, including the opposition and third-party witnesses, into systems beyond one's control, and into perspectives framed by different roles, incentives, and memories. The factual world of litigation is irreducibly shared.

At the same time, the solidity of the world itself is no longer immediately apparent. Lived experience increasingly unfolds as a series of fragmented moments, severed from traditions, shared practices, and the durable things that once structured the space of the human world. We find ourselves suspended between the past and the future, in a present that overwhelms memory and offers little horizon for what comes next. As continuity erodes, meaning becomes harder to sustain, and judgment falters. Litigation, through the disciplined practices of discovery, can partially counter this disorientation by reconstructing sequences of events, preserving digital content, and staging facts to persuade others that a particular account of the world is the more faithful one.[3]

Generative AI enters at this inflection point. For two decades, the working tools of e-discovery—keyword searches, Boolean operators, and predictive coding—produced results largely from fragments. Keywords yielded hits without context, and ranking algorithms sorted documents without explanation. Lawyers were left to infer meaning from decontextualized search results, encouraging case theories to be formed in advance of, rather than derived from, the emerging evidentiary record. This abstraction was compounded by the demands of modern litigation practice, which rely on standardized routines and forms that introduce distance and often obscure the lived experience animating the events in

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data); *see generally* George L. Paul & Jason R. Baron, *Information Inflation: Can the Legal System Adapt?*, 13 RICH. J.L. & TECH. 10, ¶¶ 1–3 (2007).

2. *See* Paul & Baron, *supra* note 1, ¶¶ 6–15, 38–45 (describing how volume, dispersion, and interrelatedness of ESI require contextual analysis across data sets); Jason R. Baron, *Law in the Age of Exabytes: Some Further Thoughts on "Information Inflation*,*"* 17 RICH. J.L. & TECH. 1, ¶¶ 2–7 (2010); The Sedona Conference, *Commentary on Proportionality in Electronic Discovery*, 18 SEDONA CONF. J. 141, 147–53 (2017).

3. *See* HANNAH ARENDT, BETWEEN PAST AND FUTURE 219–22 (rev. ed. 1968) (describing the modern condition as a gap between past and future that destabilizes inherited standards of judgment); *see also* HANNAH ARENDT, THE HUMAN CONDITION 50–58 (2d ed. 1998) (discussing the "world" as the human artifice that relates and separates people).

dispute. The data remained mute.[4]

Generative AI shifts the terrain. It does not review documents in isolation but uncovers the relations among them. It illuminates structure, continuity, and contradiction. It can situate a remark within a chain of communications, a decision within a workflow, or a revision within a developing pattern. Used with care, it enables what Hannah Arendt called an enlarged mentality: the discipline of holding before oneself the multiple perspectives that constitute a shared world.[5] But illumination is not judgment. Generative AI can organize information and reveal patterns, yet judgment and revealing meaning entail human engagement, interpretation, and responsibility.

This Article proceeds from the conviction that e-discovery is not merely a technical enterprise. The vocabulary of modern discovery—data volumes, indexing protocols, TAR models, and metadata extraction—risks obscuring a simpler truth: e-discovery is how litigation recovers the world. It is a sustained encounter with the world that parties have made. It captures hurried decisions, tentative drafts, casual remarks, and the ordinary communications that later acquire extraordinary significance. A generation ago, most discoverable documents were curated artifacts: polished memoranda, formal letters, and annual reports. Today's ESI is the opposite. It is spontaneous, unfiltered, and embedded in the rhythms of everyday life. It is not a perfect portal into intention, but it anchors litigation in more reliable terrain.[6]

The judiciary plays a critical role in protecting this factual world. Through sanctions for spoliation, authentication doctrines, and evidentiary safeguards, courts guard against distortion. When evidence is lost or manipulated, the injury is not merely a tactical disadvantage; it is a wound to the court's ability to ground its judgments. Spoliation is a harm to the public world of adjudication, not simply to a party.[7]

This Article traces how e-discovery has accommodated the explosion of digital artifacts, examines the pressures that generative AI introduces, and argues that judgment remains the central task of the legal profession even as new tools reshape the terrain. The longstanding divide between "e-discovery" and "litigation" is collapsing. The data produced in discovery now reverberates through case analysis, briefing, oral

4. *See Zubulake*, 217 F.R.D. at 317–20 (discussing cost shifting data under FED. R. CIV. P. 26 and limits of traditional retrieval).

5. *See* HANNAH ARENDT, LECTURES ON KANT'S POLITICAL PHILOSOPHY 42–44 (Ronald Beiner ed., 1982).

6. *See* FED. R. CIV. P. 26(b)(2) advisory committee's note (2006).

7. *See generally* Victor Stanley, Inc. v. Creative Pipe, Inc., 269 F.R.D. 497, 525–29 (D. Md. 2010) (Grimm, M.J.) (analyzing the court's inherent power to impose sanctions to preserve the integrity of the judicial process); *cf.* FED. R. CIV. P. 37(e) advisory committee's (2015) (standardizing the framework for spoliation sanctions to address inconsistent applications of inherent authority).

advocacy, settlement evaluation, and cross-examination. Data and advocacy have merged, and the profession must adapt to a world in which context and lived experience, which were long missing from electronic discovery and litigation, are now increasingly available.