

Drowning in Data: How the Federal Rules Are Staying Afloat in a Flood of Information

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As technology continues to permeate our everyday lives, the amount of data we generate increases—and rapidly. Consistent with Moore's Law, in 2013, 90% of all the world's data was created within the previous two years alone. Technological advances have not only changed the way we work and interact, but also how we litigate. The rise of "big data" and the commensurate rise of "big discovery" have drastically altered the quantity and types of information produced throughout the discovery phase in litigation. While increased access to information by parties involved in litigation can generally be seen as a positive development, it has also created opportunities for abuse.

Perhaps the most common, or at least the most obvious, scenario for what may be termed "eDiscovery abuse" arises when there is a large discrepancy in the quantity of information controlled between opposing parties in litigation. When one party possesses substantially more information than the other, there is little or no downside to making broad and burdensome discovery requests. Shrewd litigants can use carefully timed and tailored discovery techniques as a tool to exact larger (or pay smaller) settlements than they might have otherwise been able to obtain.

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