DISCOVERY AS TRUTH-SEEKING: WIN HARD WITHOUT HIDING THE BALL

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PROGRAM OVERVIEW

Discovery vehicles covered:

- Interrogatories
- Requests for Admission
- Requests for Production
- Depositions
- Third-Party Subpoenas
- ESI

"Both sides" perspective: plaintiff vs defense realities

Comparative lens: Federal, California, Texas, Florida, New York



DISCOVERY IS NOT MOTION IN LIMINE

- Discovery scope ≠ trial admissibility
- Evidence fights usually belong later
- Legitimate early limits:
  - Privilege / work product
  - Privacy and statutory protections
  - Truly disproportionate burden

Otherwise: discover it, contextualize it, address admissibility later



THE GOODWILL FRAMEWORK (A/K/A "DON'T BE WEIRD")

- TRANSPARENCY ABOUT REAL CONSTRAINTS:
  - custodians, systems, volume, cost, timelines
- OFFER REASONABLE ALTERNATIVES:
  - phased discovery, sampling, narrowed custodians, search terms
- AVOID BOILERPLATE OBJECTIONS
- BUILD A RECORD JUDGES TRUST

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CROSS-JURISDICTION DISCOVERY: BIG PICTURE

- **Federal:** proportionality-driven discovery
- **California:** broad subject-matter discovery
- **Texas:** broad scope with active court limits
- **Florida:** proportionality plus early disclosures
- **New York:** "material and necessary," broadly construed



STRUCTURAL DIFFERENCES THAT MATTER

- Interrogatory caps vary significantly
- RFAs capped in some jurisdictions, uncapped in others
- Deposition limits differ by number and time
- Initial disclosure regimes are not uniform
- Strategy must be jurisdiction-aware

INTERROGATORIES: WHAT THEY'RE FOR

- Early case mapping:
  - witnesses, custodians, policies, timelines, damages
- Locking in legal and factual contentions
- Preparing efficient depositions
- Not ideal for obtaining "best evidence" in defended cases



INTERROGATORIES: BEST PRACTICES



- One idea per interrogatory; limit subparts
- Narrow definitions:
  - actors, dates, systems, document types
- Build a deposition funnel:
  - who → what → documents → location
- Use contention interrogatories strategically
  - (e.g. if you contend X, then state all facts supporting that contention)



REQUESTS FOR ADMISSION: PROPER USES

- Authentication and genuineness of key documents
- Narrowing undisputed material facts
- Cost-of-proof leverage when used responsibly
- Not a harassment tool



REQUESTS FOR PRODUCTION: WHY FIGHTS HAPPEN

- Definitions are the primary battleground
- Overbreadth leads to:
  - privacy fights
  - cost disputes
  - document dumping
- Vagueness leads to non-production
- “Reasonable particularity” is the universal drafting rule

REQUESTS FOR PRODUCTION: BEST PRACTICES

- Target by:
  - custodian
  - date range
  - system or file type
  - specific events or decisions
- Use phased discovery
- Ask for the “map” first:
  - org charts, systems, retention policies



DEPOSITIONS: THE BEST DISCOVERY TOOL

The only setting to extract truth from a hostile witness

Limited ability for opposing counsel to interfere

Requires:

- rules mastery
- preparation
- willingness to hold the line



DEPOSITIONS: EXECUTION & OBSTRUCTION

- Build from written discovery
- Separate questioning lanes:
  - memory
  - foundation
  - commitment
  - impeachment
- Maintain a clean record when objections cross the line

THIRD-PARTY SUBPOENAS: PHILOSOPHY

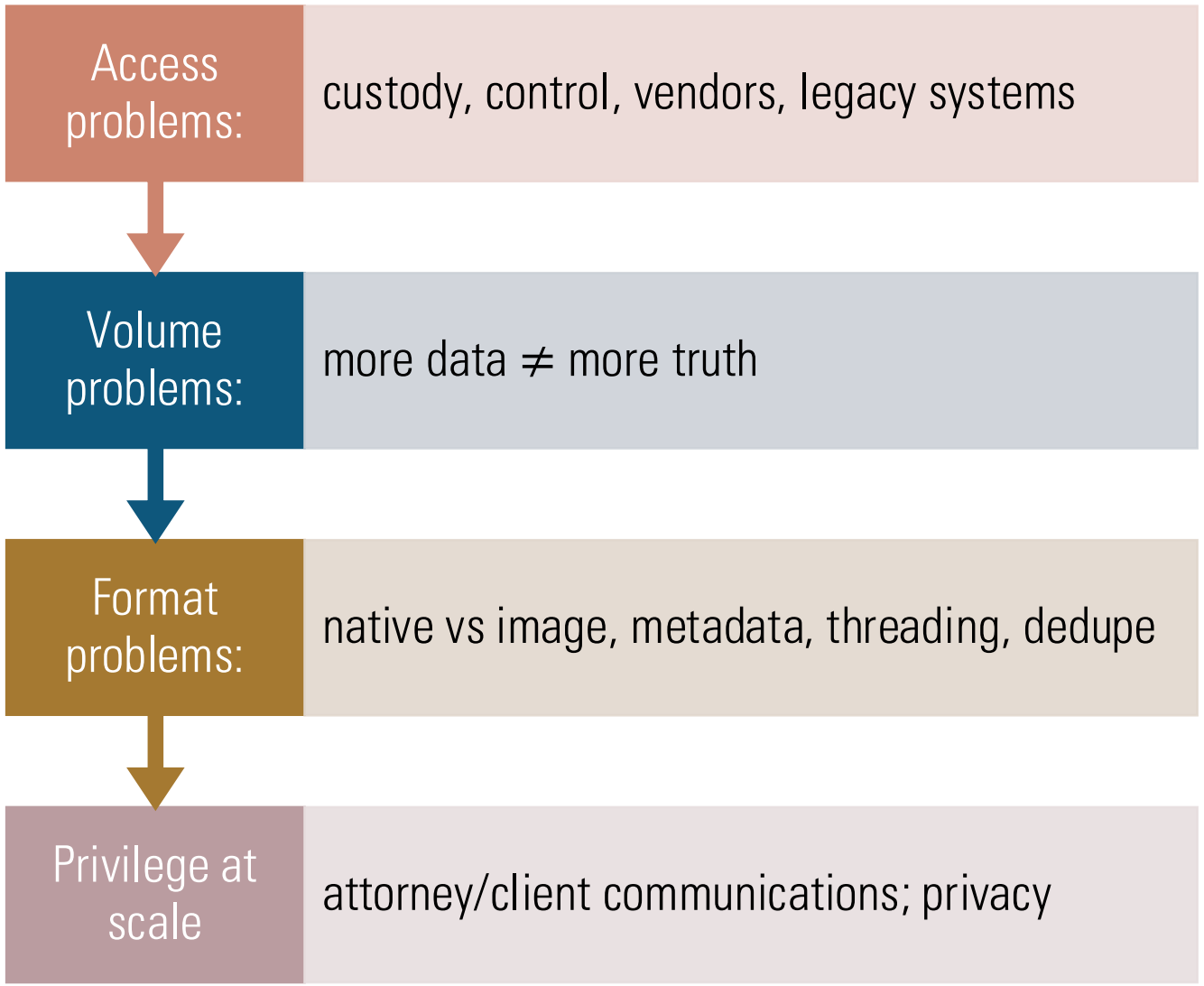
- Use sparingly and transparently
- No ambush subpoenas when privacy interests are foreseeable
- Confer early, narrow early, protect privacy
- Ethical discovery sometimes costs money—and is still worth it

THIRD-PARTY SUBPOENAS: PRACTICAL DIFFERENCES

- Federal mechanics differ from state practice
- Florida allows document-only nonparty discovery
- Texas has structured nonparty discovery rules
- New York tightly polices nonparty scope
- Always consider notice, privacy, and cost-shifting



ESI: WHY IT BREAKS LAWYERS





ESI: PROPORTIONALITY & COOPERATION

- "Burdensome" objections require proof, not rhetoric
- Be prepared to explain:
  - systems
  - custodians
  - estimated volumes
  - retrieval steps and cost
- Propose reasonable narrowing
- Transparency earns goodwill and judicial trust

MEET-AND-CONFER & SANCTIONS (HIGH LEVEL)

- Meaningful meet-and-confer is not optional
- Courts expect cooperation before intervention
- Sanctions exist—and judges use them
- Bad discovery conduct damages credibility long-term



RULES TO TAKE HOME



Fight admissibility at motions in limine



Fight privilege and proportionality in discovery



Otherwise: discover the truth and tell the story

THANK YOU FOR ATTENDING!

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