

# Truth in the Balance: Proportionality and E-Discovery

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## E-Discovery & Proportionality

Over-Discovery  
Form vs. Truth  
Metadata  
Direct Access  
Benefit vs. Burden  
Relevance  
Native vs. Static  
Discovery Abuse  
Notice Pleading v. Plausibility  
Standard  
Amendments to  
FRCP  
TRCP v. FRCP  
History of  
Discovery  
ESI

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## The History of Discovery: Pre-1938

- There were no federal rules of discovery.
- Universe of discoverable information linked to trial admissibility.
- System premised on detailed, elaborate fact recitation.
- Highly technical code-based pleading.

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## The History of Discovery: Pre-1938

FORM



TRUTH

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## The History of Discovery: Pre-1938

### Results?

- Resolution of claims on pleading technicalities
- Procedural defaults
- Especially disadvantaged poor or unsophisticated litigants

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## The History of Discovery: Pre-1938



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"Truth in the Balance"