

Truth in the Balance: Proportionality and E-Discovery

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1

E-Discovery & Proportionality

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

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2

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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3

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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5

The History of Discovery: Pre-1938



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6

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